

PHX DVT GYR

CITY OF PHOENIX AVIATION DEPARTMENT

Revenue Contract Solicitation (“RCS”) Request for Responses

DEER VALLEY AIRPORT (DVT) FOOD AND BEVERAGE CONCESSION

AVN RCS 21-002

SCHEDULE OF EVENTS

All dates and time are subject to change without prior notice.

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

ACTIVITY	DATE & TIME (All times are local Phoenix, AZ time)
Publish RCS	Wednesday, October 21, 2020
Pre-Response Meeting via WebEx Live Meeting	Monday, November 9, 2020 at 2:00 p.m. Join by Phone: +1-415-655-0001 Access Code: 133 177 4990 Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=mff764f3279dfd5223e8846feaa7cd4b2
Site Tour at Deer Valley Airport: 702 West Deer Valley Road, Phoenix, AZ 85027. Please RSVP for the tour.	Monday, November 9, 2020 at 3:30 p.m. RSVP: https://www.eventbrite.com/e/site-tour-avn-rcs-21-002-deer-valley-airport-food-and-beverage-concession-tickets-125633193263
Questions Deadline: Submittal of Written Questions	Monday, November 16, 2020 at 2:00 p.m.
Answers Deadline: Answers to Written Questions	Tuesday, December 1, 2020
Solicitation Deadline: Response due by 2:00 p.m.	Tuesday, December 15, 2020 at 2:00 p.m.
Tentative Interviews / Discussions (If Necessary)	Monday, January 25, 2021
Award Recommendation to Phoenix City Council	April 2021
Estimated Commencement of Contract	May 2021

Submit Responses and request for alternate formats to:

Janet Lee
Procurement Officer
City of Phoenix Aviation Department
2485 East Buckeye Road, Phoenix, AZ 85034-4301
602-273-2768 (TEL) / 800-781-1010 (TTY)
busopps.aviation@phoenix.gov

<https://solicitations.phoenix.gov/Solicitations/Details/822>

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



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SECTION I - INTRODUCTION

CITY OF PHOENIX
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I. INTRODUCTION

The City of Phoenix (“City”) Aviation Department (“Aviation”) is seeking Responses from qualified Respondents to operate a food and beverage concession at Phoenix Deer Valley Airport (“Airport” or “DVT”). The Successful Respondent will enter a Concession Lease Agreement (“Lease”) with the City. A copy of the draft Lease is attached as **Exhibit 1**.

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

- Provide passengers with a national, regional, and/or local brand concept(s) that reflect the region, address Airport consumer needs and preferences, and reflect current trends over the term of the Lease.
- Offer a unique food & beverage concept in the DVT terminal which includes the sale of alcoholic beverages.
- Optimize sales and rental revenues over the term of the Lease.
- Increase opportunity for local and small business participation.
- Improve the quality and uniqueness of food and alcoholic and non-alcoholic beverage offerings and a limited offering of branded merchandise.
- Select Respondents, including their subtenant and/or joint venture partner(s) (if any), who have experience in the successful operation of food and beverage or retail concepts.
- Select Respondents based on the entire Response, not solely based on the highest projected gross sales and/or rental revenues.
- Select Respondents based on a number of factors including Respondents’ ability to provide the highest quality customer service, goods, and convenience to the traveling public, in addition to the expectation of reasonable rental revenues.

Selection will be based on the entire Response and the Evaluation Criteria and will not be solely based upon the highest financial return to the City. All Respondents must demonstrate not only food and (alcoholic and non-alcoholic) beverage experience and financial capability, but also creativity in proposing a food and beverage concept that will enhance the customer experience.

A. BACKGROUND

Deer Valley Municipal Airport was built in 1960 as a private airfield with a single runway. In 1971, the City of Phoenix purchased the 482-acre site. Operations began with a temporary air traffic control tower sitting atop a four-foot mound of dirt. In 1975, a new terminal was constructed and the FAA began directing air traffic. The airport also became home to the Phoenix Police Department who utilize a 12,000-square-foot hangar for their citywide helicopter operations.



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The City Council adopted a revised Master Plan in 2007 calling for a balanced approach to accommodate all customers of the airport. This includes potential development of corporate hangers on vacant land on the southeast side of the airport. Careful planning and a sleek, contemporary design have earned Phoenix Deer Valley recognition as one of the nation's finest general aviation airports.

Further information and statistics for DVT are available at <https://deervalleyairport.com/About/FactsAndStatistics>.

The City makes no representation or warranties, expressed or implied, as to the accuracy or relevancy of the statistical data. The Respondent assumes all risk associated with using the data, including its accuracy, relevance, and/or materiality to the formulation of its Response.

B. DEFINITIONS

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

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

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

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

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

DISCUSSIONS means an exchange between the Procurement Officer and one or more Respondents submitting Responses determined to be Reasonably Susceptible Responses.

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



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

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

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

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

RESPONSE means a written response to this Revenue Contract Solicitation.

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

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

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

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

SUBTENANT a person or entity that leases property from Respondent.

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

C. MINIMUM QUALIFICATIONS

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

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



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1. Each Respondent must have at least three years of experience owning or operating a full-service restaurant that includes the sale of alcoholic beverages within the last five years.
2. Provide the required Response Guarantee, as defined in Section I(I)(1).

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

Respondents should also include:

- Bank's Letter of Commitment – Respondents to provide a letter from their bank communicating the bank's commitment to provide the Respondent, if successful, with a Letter of Credit, as that term is defined in Section I(I)(2), in an amount equal to three (3) months' Minimum Annual Guarantee (MAG) as that term is defined in Section II(B). If the Respondent intends to submit a cash deposit in lieu of a Letter of Credit, the Respondent must submit a letter from the Respondent's bank confirming the ability of the Respondent to provide a cash deposit in an amount equal to three (3) months' MAG.
- Evidence of ability to obtain the required insurance, such as a commitment letter from an underwriter or a current certificate of insurance showing comparable insurance limits, confirming that the Respondent is insurable for the required coverages as defined in **Exhibit 10**.

D. GOOD STANDING

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

E. SMALL BUSINESS OUTREACH REQUIREMENTS

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

The Airport has a national market for small business participation. Successful Respondents shall fulfill all required small business outreach requirements and submit all required outreach efforts documentation in **Exhibit 15**, including the SBE Outreach Commitment Form for the food and beverage concession at Phoenix Deer Valley Airport contract opportunities within sixty (60) days of execution of the Lease.



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Successful Respondents shall provide a corporate Small Business Participation Plan (Plan) within sixty (60) days following Lease execution for City approval; such approval shall not be unreasonably withheld. The Plan shall contain strategies to foster small business participation and information concerning the small businesses, including names of firms and addresses.

Every year on the anniversary of the Effective Date of the Lease, the Successful Respondent must provide the City with any material changes to its Airport-approved Plan.

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

The Statement of Outreach Commitment Form – EO1, marked **Exhibit 14** attached, is due with the Response at the time of submittal. The Small Business Outreach Efforts Form – EO2, marked **Exhibit 15** attached, and Small Business Participation Commitment Form – EO3, marked **Exhibit 16** attached, are due sixty (60) days from execution of the Lease or a date determined by the City.

F. EQUAL PAY REQUIREMENTS

In 2015, Phoenix City Council amended Phoenix City Code Section IV, Article V, 18-21 Equal Opportunity Requirements, known as the Equal Pay Act, to define expectations of all lessees with the City of Phoenix. **Exhibit 5** details the Act, as well as Federal and State provisions. As part of the Response for this RCS, Respondents are required to provide information on how they support, communicate, ensure and comply with these requirements. **Respondents are expected to be as detailed as possible.**

G. LEASE TERM AND CONTRACTUAL RELATIONSHIP

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

The Lease will become effective on the date of execution by the City (“Effective Date”). The term of the Lease will be for seven (7) years with one 3-year extension option, which will be exercised at the sole discretion of the Aviation Director.

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



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This RCS is for a non-exclusive Lease with the City. The City will not enter into an exclusive Lease with a Successful Respondent. At any time, the City has the right to award Leases to other operators for food, beverage, and retail concepts in operation at DVT that may be located within existing locations or in later additions to locations throughout the Airport.

H. EXECUTION OF THE LEASE

The City will send the final Lease to the Recommended Respondent after Phoenix City Council approves the Award Recommendation. Within **30 calendar days** from the date the Lease was sent, the recommended Respondent must sign and submit the final Lease to the City. The City may request City Council approval to award the Lease to the next highest qualified Respondent in the event the City does not receive the signed Lease and all other required documentation from the recommended Respondent within **30 calendar days**. The Lease terms may be amended at the sole discretion of the City at any time during the RCS process and/or prior to execution.

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

I. GUARANTEE INSTRUMENTS

1. Response Guarantee: Responses must be accompanied by a one thousand dollars (\$1,000.00) Response Guarantee in the form of a cashier's check payable, without condition or restrictive endorsement, to the "City of Phoenix". **Each Respondent's Response Guarantee must be submitted in a separate sealed envelope clearly marked "Response Guarantee" along with the Response.**

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

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

2. Performance Guarantee: Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a Performance Guarantee in the form of a Letter of Credit (LOC) in the amount of three (3) months' Minimum Annual Guarantee (MAG) rent or a Cash Deposit in the amount of three



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(3) months' MAG rent. The LOC shall be in the form provided in **Exhibit 11**. The Cash Deposit shall be submitted in the form provided in **Exhibit 12**.

Adjustments to Performance Guarantee:

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

Letter of Credit or Cash: If the Performance Guarantee is in the form of an irrevocable standby Letter of Credit (LOC), then the Successful Respondent shall use the City's **LOC form**, attached hereto and marked **Exhibit 11**. The LOC shall be issued by either: (1) a financial institution with counters in the Phoenix metropolitan area at which the City may make draws on the LOC; or (2) a financial institution with headquarters in the United States on which City may make telefacsimile draws. Unless City receives a written extension of the LOC in a form acceptable to City at least sixty (60) calendar days before the end of the term of the LOC, City, without notice to Successful Respondent, may draw upon the full amount of the LOC and retain all proceeds as a cash performance guarantee. Any changes to the LOC required provisions must be approved in advance by the Aviation Director. If the Performance Guarantee is in the form of cash, Successful Respondent shall deliver to City a completed **Cash Deposit for Performance Guarantee Form** attached hereto and marked **Exhibit 12**.

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

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



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3. Crime Insurance: Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a bond covering employees required to handle money in the amount of \$10,000.

J. PRE-RESPONSE MEETING

Respondents are strongly encouraged to attend the Pre-Response meeting that will be held via WebEx on the date and time listed on page 1. **To request a reasonable accommodation, please contact Janet Lee, no later than 14 calendar days prior to the date and time listed on page 1 at 602-273-2768/Voice or 7-1-1/TTY, or email janet.lee@phoenix.gov.**

In addition, a tour of the premise at DVT will be offered following the meeting, subject to any recommended measures to protect the health and safety of the public and our customers. Tour participants will be required to maintain social distancing and wear a face covering (see the following link for exceptions: <https://www.skyharbor.com/BeforeTraveling/health-information>).

Please register for the tour at the following link: <https://www.eventbrite.com/e/site-tour-avn-rcs-21-002-deer-valley-airport-food-and-beverage-concession-tickets-125633193263>

K. QUESTIONS AND ANSWERS (Q&A) PROCESS

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

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

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

All questions about this RCS, including the draft Lease, must be submitted in writing no later than the question deadline listed on page 1 to busopps.aviation@phoenix.gov. All written questions will be responded to in writing and available at: <https://solicitations.phoenix.gov/Solicitations/Details/822>.



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L. ADDENDUM TO RCS

Aviation may amend this RCS before or after the solicitation deadline listed on page 1. Changes to this RCS will be in writing as an addendum and posted at: <https://solicitations.phoenix.gov/Solicitations/Details/822>. Respondents are responsible for checking the website and reviewing all updates and postings.

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

M. RESPONDENT EXCEPTIONS

The City will award the Lease on a fair and competitive basis and will not accept any changes to the material provisions or requirements of this RCS or Lease. Respondents that take exception to, add to, or subtract from any material provision or requirement of this RCS or Lease may be considered as attempting to change the provisions or requirements of this RCS to gain an unfair advantage over other Respondents. Responses including such exceptions or changes, or that are conditional, are subject to rejection as non-responsive Responses. Non-material exceptions or changes will only be considered if approved by the City during the Q&A process. No new exceptions or changes will be considered after the recommended Respondent has been identified.

N. AIRPORT SECURITY

Successful Respondent must comply with all Airport Rules and Regulations. Visit <https://deervalleyairport.com/DoingBusiness/AirportRulesRegulations> for current Airport Rules and Regulations.

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

O. EXCLUSIVE BEVERAGE RIGHTS

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



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P. RESPONSE LIMITATION TO THIS RCS

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

The following shall be deemed Multiple Responses:

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

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

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

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

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

The prohibition on Multiple Responses does not preclude a person or entity from participating on more than one Response as a subtenant only or submitting a Response as a Respondent and participating as a subtenant, licensee or vendor on a different Respondent's team.

CONTINGENT RESPONSES WILL BE REJECTED.



SECTION II – SCOPE OVERVIEW

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II. SCOPE OVERVIEW

A. INTRODUCTION

The Successful Respondent will be responsible for the design, renovation, maintenance, and operation of the Deer Valley Airport (DVT) food and beverage concession. The Premise, identified in **Exhibit 2**, is approximately 6,603 square feet. The Successful Respondent will enter into a concession Lease with the City; a draft of the Lease can be found in **Exhibit 1**.

The Successful Respondent will renovate and operate a concession space that is a full-service restaurant that could include (but is not required to include) a bar/lounge area. Restaurant is defined as a place of business that offers a wide range of freshly prepared hot and cold entrees, appetizers, salads, desserts, and non-alcoholic and alcoholic beverages. Full Service is defined as a sit-down restaurant catering to customers with a sense of personal attention. A customer orders a meal from a server. The server places the order with the kitchen and then delivers the order to the customer's table when it is ready. The concept is expected to convey a family friendly, comfortable and enticing atmosphere, even for customers dining alone. Quick serve concepts are prohibited in this space.

The City is open to the installation of an approved unique restaurant concept, or a local/regional concept with successful off Airport locations.

The City desires that the concession space be utilized for maximizing customer service and optimizing revenues. The amount of space stated in the RCS will be the amount leased to the Successful Respondent. If the Respondent believes it needs less space to maximize gross sales and rent revenues, then the Successful Respondent will be allowed to designate a portion of the space for storage. All proposed modifications to the space are subject to approval by the Aviation Department. The cost of storage improvements will be at the discretion of the Successful Respondent and must comply with all applicable codes, ordinances, rules, regulations, and life safety requirements.

The Successful Respondent will conduct operations in a professional, business-like manner so as to not disturb or be offensive to other tenants or patrons and will not provide or sell any additional services unless approved in writing by the Aviation Director. The Successful Respondent will not use or permit use of leased space(s) for any activity not expressly permitted in the Lease.

B. MINIMUM ANNUAL GUARANTEE (MAG) OR PERCENTAGE RENT

Except as described in Section II(C), during the term of the Lease, the Successful Respondent will pay MAG or Percentage Rent derived from gross sales, whichever is greater.



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Each Respondent must propose the first year MAG (**Exhibit 7**) of gross sales which is part of the evaluation criteria. **The proposed first year MAG must be equal to or greater than \$92,000.00.** Throughout the term of the Lease, the Successful Respondent must pay a MAG or Percentage Rent derived from gross sales, whichever is greater.

C. RENT

When the Primary Term begins, the Successful Respondent will be obligated to pay rent as specified in the Lease.

D. “AS IS” CONDITION AND REMODEL INVESTMENTS

The concession space will be available to the Successful Respondent in an “as is” condition. All capital investments (Remodel Investments) must be provided by the Successful Respondent in compliance with **Exhibit 6**. Respondents are responsible for proposing designs and operations in compliance with all requirements in the draft Lease (**Exhibit 1**) and the Tenant Design Criteria (**Exhibit 18**).

The Successful Respondent shall, in the design and construction of the improvements to the space, comply with all applicable provisions of the Americans with Disabilities Act, 42 U. S. C. § 12101 et al., the ADA Accessibility Guidelines (ADAAG), and implementing regulations as imposed upon the owner and operator of public facilities.

The Successful Respondent will be required to spend a minimum amount of \$100,000.00 for leasehold improvements and trade fixtures. In the event the Successful Respondent does not spend the total Remodel Investment proposed for the food and beverage concept, the unspent balance must be remitted to the City no later than four (4) months after commencement of the primary term of the Lease.

Architectural and engineering fees are excluded from the calculation of initial capital investments for the concession space. All concession spaces must be maintained in “opening day” condition throughout the term of the Lease. Concession spaces that are not maintained in “opening day” condition will not be considered for a lease option renewal by the Aviation Director.

During the construction period, the Successful Respondent may be required to set up temporary facilities at the Successful Respondent’s cost to provide concession services. These temporary facility costs are separate from the initial capital investment requirement listed above. Any temporary facility must be approved in advance by the Aviation Department.



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E. FOOD AND BEVERAGE CONCESSION

The following standards will be applied to the DVT Food and Beverage Concession.

1. Successful Respondent will provide and maintain at its own expense a first-class food and beverage concession, including all improvements, alterations, and fixtures necessary for the customary operation of such a business. Successful Respondent's concept must include the sale of alcoholic beverages.
2. The City expects the concept to be a popular national name brand, local/regional concept, or a unique concept.
3. Successful Respondent must provide breakfast, lunch and dinner menu items. Breakfast must be served daily until at least 10:30 a.m. local Arizona time.
4. For any national name brand or local/regional concept proposed, the quality of the menu offerings at Deer Valley Airport (DVT) should be the same or of a higher standard than the offerings at the concept's street location. The City expects the national name brand or local/regional concept's DVT menu, in terms of the number and variety of items, to be as close as reasonably possible to the menu of the concept's street location(s). The final menu will be subject to approval by the Aviation Director.
5. The concept must offer a variety of price points and menu items. The menu should offer items for children or provide families traveling with children a separate "kids" menu; as well as healthy, gluten-free, vegetarian and vegan options. The menu should also offer options for individuals with special dietary needs.
6. "To go" menu pricing must be equal to or less than in-house dining menu pricing. Alcoholic beverages cannot be sold on the "to go" menu.
7. The City recommends the Successful Respondent provide environmentally friendly packaging that is easy to dispose of for "to go" menu items.
8. If appropriate to the concept, a bar/lounge area should have state-of-the-art projection and/or flat screen televisions featuring sports, special events and news programs during business hours. The programming has to be approved by the Aviation Department and it cannot be public facing to the terminal.
9. The design and configuration of the concession should accommodate all of the following customer groups:



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- a. Customers preferring an open and friendly environment, especially if traveling alone, so they feel comfortable dining and drinking by themselves, and customers interested in viewing airplanes;
 - b. Families traveling together;
 - c. Non-traveling or local patrons, including the Aviation community;
 - d. Customers with disabilities needing accessible entry and seating; and
 - e. Customers only wanting alcoholic or non-alcoholic beverages at a bar/lounge area.
10. The Successful Respondent is encouraged to use the latest technology to increase their ability to serve customers quickly and efficiently.
 11. The concession space is expected to be developed for revenue producing purposes, except for areas provided for seating or storage.
 12. The Successful Respondent will be responsible for providing all Remodel Investment (capital investment) for the concession space, including equipment, fixtures, and furniture for seating areas inside the unit and on the patio.
 13. The Successful Respondent will be responsible for the concession space to be compliant with all aspects of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the ADA Accessibility ADAAG guidelines, including but not limited to providing wheelchair accessible seating in at least five percent (5%) of the concession space seating.
 14. Retail merchandise may be allowed to be sold by the Successful Respondent if it is directly related to the concept, i.e. logo wear and concept specific merchandise (Branded Merchandise). No more than 5% of the F&B unit may be used for the sale of the Branded Merchandise.
 15. The Successful Respondent must offer the same promotions and discounts and sell and accept gift cards and frequent buyer cards offered at the concept's street location(s), if applicable. Customers should not see any difference between the concept's airport location and its street location.
 16. The Successful Respondent must keep up with F&B trends and change the menu to reflect customer needs and preferences. All changes to menu items and prices must have the prior written approval of the Aviation Director.
 17. The Successful Respondent must provide a pleasing and comfortable ambience.



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18. The Successful Respondent must display attractive menu boards, signage, and logos.
19. The Successful Respondent must operate the food and beverage concession seven (7) days a week, at a minimum from 6:00 a.m. to 8:00 p.m. local Arizona time unless otherwise established at the sole discretion of the Aviation Director.
20. The Successful Respondent must identify the general manager (GM) assigned to the food and beverage concession. The GM should have experience in the management of food and beverage operations and be available 24 hours a day, seven (7) days a week for the Airport to communicate any challenges and/or emergencies.
21. The Successful Respondent must ensure managers are available on-site at all times during the F&B business hours.
22. The Successful Respondent must recruit, train, supervise, direct, and deploy the optimum number of employees to ensure staffing levels reflect the hourly and seasonal fluctuation of activity.
23. The Successful Respondent must ensure employees wear appropriate uniforms or clothing and clearly display an Airport security identification badge.
24. The Successful Respondent must accept cash, traveler's checks, debit cards, and at least three (3) major credit cards for any purchase.
25. The Successful Respondent must provide timely, attentive, and friendly service and process payments from customers promptly.
26. The Successful Respondent must utilize and have readily available customer comment cards.
27. The Successful Respondent must install and use cash registers, sales slips, invoicing machines, and other automatic accounting equipment required to properly and accurately record the gross revenues on all sales by type and any other business transactions.
28. The concession must be maintained in "opening day" condition throughout the term and any renewal(s) or extension(s) of the Lease. Maintenance responsibilities will include all ventilating and air conditioning equipment, electrical, fire suppression, water and sewer systems, and gas, where



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applicable, within the Premises as may be required by City and County regulatory agencies having jurisdiction over the Premises.

F. MONTHLY REPORTS

The Successful Respondent will be responsible for submitting monthly reports to Aviation. The monthly report will be due within 20 calendar days after the close of each month and must include a detailed statement of gross sales and any deductions from gross sales for the preceding month. The monthly report must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by a responsible financial officer of the Successful Respondent and must be submitted in a format approved by Aviation.

Aviation may require the Successful Respondent to provide additional reports pertaining to the operations of the F&B and retail concession.

G. HOURS OF OPERATION

The food and beverage concession will be required to maintain hours of operation as approved by the Aviation Director. Business hours will be seven days a week, 365 days per year, at a minimum from 6:00 a.m. to 8:00 p.m. local Arizona time. Business hours are subject to change at the sole discretion of the Aviation Department.

H. ADDITIONAL SPACE

Limited airport storage and office space (support space) may be made available to the Successful Respondents. Additional support space, if available, would be charged at a rate approved by the Airport. Due to the limited amount of support space available in DVT, the Successful Respondent may need to secure off-airport storage, office, and distribution space to support their airport operations.

I. CUSTOMER DATA AND SECURITY

The Successful Respondent should consider the security of customer data, including credit card numbers, phone numbers, and any other identifying information, and have methods in place to ensure that customer data is adequately protected. **The Respondent should submit proof of Payment Card Industry Data Security Standard (PCI DSS) Certification with the Response.** The PCI DSS Certification will ensure that the Successful Respondent has all required measures in place to secure customer credit card payments.



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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III. EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

A. EVALUATION CRITERIA

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

1. *Suitability of the Proposed Restaurant Concept and Design* **0-350 Points**

- a. Concept description for the food and beverage concession space.
- b. Creativity and innovation for the interior and exterior designs of the concession space.
- c. Architectural renderings, material boards, and construction schedule for proposed food and beverage concept will be evaluated for:
 - i. Efficiency and usage of the interior space and the design of the layout plan (i.e., kitchen and prep areas, storage, seating areas and use of technology, bars/lounges, point of sale stations, customer circulation and queuing, etc.) and exterior patio layout plan.
 - ii. Overall quality of construction materials for flooring, wall coverings, fixtures, display units, signage, etc.
 - iii. Clear and feasible construction schedule.
 - iv. How the design compliments the Deer Valley Airport.
 - v. Narrative promoting environmental sustainability and environmental conservation.
- d. Narrative explaining the concept, why the concept was chosen, any unique conceptual attributes, and how the concept integrates with the Airport environment.
- e. A concept that is licensed must provide the specific involvement of the licensor in the concept operations.

2. *Quality and Suitability of Menu Items* **0-250 Points**

- a. Methodology for selection of menu items.
- b. Proposed menu(s) and price ranges:
 - i. Describe the variety of the food and beverage offerings, any specialized menu items, and Branded Merchandise.
 - ii. Describe methods used to monitor and implement current or popular and seasonal food and (alcoholic and non-alcoholic) beverage trends.
 - iii. Menu prices.
- c. How will the menu incorporate seasonal ingredients and trends.
- d. Perceived appeal of menu items to Airport users and restaurant customers.



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- e. Description of how menu ingredients are sourced and how quality is maintained.
- f. Menu options for individuals with special dietary needs.

3. Qualifications & Experience of Ownership & Management Team 0-200 Points

- a. Respondent and Partners’ experience and number of years owning, managing, and/or operating a full-service restaurant.
 - i. Airport and non-airport venue experience.
- b. Management team and on-site staff experience operating a full-service restaurant.
 - i. Staff recruitment and customer service training program.
 - ii. Staffing plan (schedule).
 - iii. Facility maintenance including normal repairs, cleaning, and trash removal.
 - iv. Policies for managing customer complaints and emergency situations.
- c. Sales performance of concession or restaurant venue(s) operated by Respondent and all Partners.

4. Amount of Remodel Investment 0-100 Points

- a. Proposed Remodel Investment.

5. Proposed Minimum Annual Guarantee (MAG) 0-100 Points

- a. Proposed First Year Minimum Annual Guarantee.

Total Points Available 1000 Points

B. SUBMISSION OF OFFER – ELECTRONIC RESPONSE SUBMISSION

Due to the national COVID-19 pandemic, the City of Phoenix Aviation Department is accepting electronic Responses for this solicitation, in addition to other methods of submitting sealed Response packages (hardcopies). Respondents are responsible for submitting the Response (electronic or hardcopies) before the due date and time of the submittal deadline.

For “In-Person” and “via Carrier (i.e. USPS, FedEx, UPS, etc.)” Delivery: Responses will be received at the Aviation Office Building located at 2485 East Buckeye Road, Phoenix AZ 85034 in the **LOBBY** during normal business hours (8:00 am – 5:00 pm local Phoenix time) by appointment and by calling 602-273-2116 or instructing the Carrier to call the same number at the time of arrival. Responses should be clearly marked on the outside of the package as designated in the solicitation. The



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Respondent is responsible for managing potential delays due to Covid-19 and the City does not make exceptions for delays caused by the Carrier.

For “Electronic” Submittal: Please submit your Response via email to busopps.aviation@phoenix.gov. The date and time on the email will provide proof of submission and verification if the Response was received on or prior to the Due Date and Time specified. Please identify the solicitation number, **AVN RCS 21-002** on the subject line of the email when submitting your Response.

The actual Response Guarantee, regardless of the Response submission method, must be received at the Aviation Office Building located at 2485 East Buckeye Road, Phoenix AZ 85034 by the Solicitation Deadline as indicated on page 1.

It is the responsibility of the Respondent to ensure that the Response is timely, including confirming that there are no technical reasons that any Response submitted electronically may be delayed.

C. DELIVERY OF RESPONSES

If the Respondent submits the Response in a hardcopy format, then the Response must be in a sealed package marked with the following information:

- Respondent’s Name
- Respondent’s Address (as shown on the Certification Page)
- AVN RCS 21-002
- RCS Response To: DVT Food and Beverage Concession

Respondent’s sealed package must include the following:

- One (1) original Response with an authorized original signature on the Affidavit **(Exhibit 4)**
- Seven (7) hard copies of the Response.
- One (1) electronic copy of the Response on a USB drive or CD-ROM, using unlocked pdf format and in the same page order as the hard copy.
- One (1) set of material boards, (maximum dimension: 11” x 17”).
- In a separate sealed envelope marked “Response Guarantee”, the one-thousand dollars (\$1,000.00) Response Guarantee check.
- In a separate sealed package marked “Statement Regarding any Agreement with Labor Organizations”, the Statement Regarding Any Agreement with Labor Organizations as specified in Section III (H).



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- One (1) completed and signed copy of the Form EO1: Statement of Outreach Commitment (**Exhibit 14**). Failure to complete, sign, and submit Form EO1 with the Response will result in a non-responsive submission and be disqualified from further evaluation.

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

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

TAB 1 – GENERAL INFORMATION

- Cover Letter (1-page limitation) including the following information on the first page of the letter:
 - Name of Respondent. If Respondent is a joint venture, then indicate all partners and each partner’s percentage of ownership interest in joint venture.
 - Names of all sublessees, if any.
- Table of Contents for entire Response with page numbers included.
- Conflict of Interest and Solicitation Transparency Disclosure Form (**Exhibit 9**).
- Notarized Affidavit with an authorized signature (**Exhibit 4**).
- Letter of Declaration (**Exhibit 5**).
- Form EO1: Statement of Small Business Outreach Form (**Exhibit 14**).
- Bank’s Letter of Commitment - Respondent must provide a letter from its bank communicating the bank’s commitment to provide the Respondent, if successful, with a Letter of Credit or Cash Deposit in an amount equal to three (3) months’ MAG as that term is defined in Section I(1)(2).
- Evidence of ability to obtain required insurance coverages in the required limits as those limits are defined in **Exhibit 10**.
- Proof of Payment Card Industry Data Security Standard (PCI DSS) Certification.

TAB 2 – SUITABILITY OF THE PROPOSED RESTAURANT CONCEPT AND DESIGN FOR THE EXISTING CONCESSION SPACE AT DVT

Respondents should provide a narrative regarding the proposed restaurant concept and design at Deer Valley Airport and include the following in Tab 2 of their Response:

- Narrative and description of proposed restaurant concept, including national name brand, local or regional concepts.
- Describe why the concept was chosen and provide any unique attributes.
- Architectural Renderings (11” x 17”) of the concession space at DVT:



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- Exterior – overall design to include color scheme, signage and graphics, lighting, etc.
- Interior – overall design to include color scheme, materials, lighting, displays, etc.
- Layout of interior – fixtures and technology, storage area, kitchen, customer waiting area, point of sale / register, etc.
- Construction Phasing Plan and the detailed approach to meet “Opening Day” schedule.
- Provide a description of the space design components related to environmental sustainability and conservation.
- Describe why the concept was chosen and provide any unique attributes.
- A concept that is licensed must provide the specific involvement of the licensor in the concept operations.

TAB 3 – QUALITY AND SUITABILITY OF MENU ITEMS

Respondents should provide a narrative regarding the quality and suitability of proposed menu items and include the following in Tab 3 of their Response:

- Methodology for selection of menu items.
- Proposed menu(s) and price ranges.
- How will the menu incorporate seasonal ingredients and trends.
- Perceived appeal of menu items to Airport users and restaurant customers; menu customization.
- Description of how menu ingredients are sourced and how quality is maintained.
- Menu options for individuals with special dietary needs.
- Describe the ability to obtain proper approval to serve alcoholic beverages at the concession (such as a valid AZ Liquor License).

TAB 4 – QUALIFICATIONS AND EXPERIENCE OF OWNERSHIP AND MANAGEMENT TEAM

Respondents should provide a narrative regarding the qualifications and experience of the Respondent and the management team in owning and operating a food and beverage concession / full-service restaurant venue and include the following in Tab 4 of their Response:

- Respondent’s qualifications and experience in owning, managing and operating a food and beverage concession or full-service restaurant(s) on airport and/or non-airport location(s).
 - Number of years in food and beverage services.
 - Number of years and experience operating and managing a similar concept.
 - Sales performance of food and beverage / restaurant venue(s) operated by the Respondent.



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- Experience of Respondent and Respondent's Joint Venture Partner with proposed concept.
- Provide a detailed narrative to support, communicate, ensure and comply with the **Equal Pay Act** as well as Federal and State provisions.
- Provide three (3) business references (**Exhibit 8**).
- Qualifications and experience of the on-site team including on-site manager(s) who will be responsible for the operations of the concession space under the Lease.
 - Staff recruitment and customer service training program.
 - Sample Staffing plan (schedule).
 - Facility maintenance plan including normal repairs, cleaning, and trash removal, etc.
 - Policies for managing customer complaints and emergency situations.

TAB 5 – AMOUNT OF REMODEL INVESTMENT

Respondents should include the following in Tab 5 of their Response:

- Proposed amount of Remodel Investment. The minimum amount must be equal to or greater than \$100,000.00 (**Exhibit 6**).
- Respondent to demonstrate financial capability to fund the proposed Remodel Investment.

TAB 6 – PROPOSED MINIMUM ANNUAL GUARANTEE (MAG)

Respondents should include the following in Tab 6 of their Response:

- Proposed first year Minimum Annual Guarantee (MAG). The minimum amount must be equal to or greater than \$92,000.00 (**Exhibit 7**).
- Demonstrate financial ability to implement the proposed concept at DVT.
- Pro Forma Financial Projections: Projected Gross Sales and Rental Revenues.

D. FORM OF RESPONSE

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

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

- Narrative portions of the Response shall be submitted on 8.5" x 11" paper with Arial font of at least 12 point.
- The Response and each hard copy shall each be submitted in a 3-ring 8.5" x 11" binder.



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- The pages of the Response must be numbered. Pages must be numbered by section (example: Tab 2's page numbers are 2-1, 2-2, 2-3, etc.).

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

Responses are limited to thirty (30) double-sided (or sixty (60) single-sided), letter-size pages typed in 12-point Arial font. The pages of each Response must be numbered. Exhibits and financial information, including the Pro Forma, will not be counted towards the thirty (30) double-sided (or sixty (60) single-sided) page limit. Any additional pages that exceed the 30 double-sided or 60 single-sided page limitation will be removed from the Response and not be considered during the evaluation process. **Respondents are responsible for reading and complying with all requirements of this RCS.**

E. WITHDRAWAL / CORRECT RESPONSE

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

F. LATE RESPONSES

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

G. RESPONSE RESULTS

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

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



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H. LABOR ORGANIZATION DOCUMENTATION

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

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

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



SECTION IV – DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

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IV. DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

A. RESPONSIVENESS AND RESPONSIBILITY

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

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

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

B. EVALUATION

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

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

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

C. DISCUSSIONS

The Procurement Officer may hold Discussions, based on the evaluation panel's review, with Respondents submitting a Reasonably Susceptible Response. Discussions may be conducted orally but must be confirmed in writing. In conducting



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Discussions, the Procurement Officer may not disclose any information derived from Responses submitted by competing Respondents. The Procurement Officer may request Response revisions from all Respondents with whom discussions were held. The Procurement Officer will facilitate the evaluation of any revisions in the revised Responses resulting from the discussions.



SECTION V – GENERAL TERMS AND CONDITIONS OF THE RCS

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V. GENERAL TERMS AND CONDITIONS OF THE RCS

A. SOLICITATION TRANSPARENCY POLICY

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



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Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the agreement, as long as the City cancels with a statement that the City will rebid the solicitation.

6. With respect to the selection of the Successful Respondent, the City Manager and City Manager's Office will continue the past practice of exerting no undue influence on the process.

B. AWARD RECOMMENDATION

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

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

C. DISCLOSURE OF CONFIDENTIAL AND PROPRIETARY INFORMATION

1. All materials submitted by Respondents are the property of the City and become a matter of public record available for review pursuant to Arizona law. A Respondent may request specific information contained within its Response be treated by the Procurement Officer as confidential or proprietary (collectively confidential) provided the Respondent clearly labels the information "confidential". To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential.
2. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Respondent as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify a Respondent in writing of any request to view any portion of its offer marked "confidential." The Respondent will have fourteen (14) calendar days thereafter to (i) notify the Procurement Officer if Respondent does not object to such disclosure, or (ii) obtain and furnish a court order enjoining such disclosure. The time to obtain a court order may be extended at the Procurement Officer's sole discretion. If the Respondent does not provide the Procurement Officer with a court order enjoining release of the information during the designated time period, the Procurement Officer will make the information requested available for inspection.



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D. CITY'S RESERVATION OF RIGHTS

The City may:

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

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

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

F. RESPONDENT INCURRED COSTS

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

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

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

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



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H. TITLE VI SOLICITATION NOTICE

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

I. RESPONDENT CERTIFICATION AND AFFIDAVIT

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

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

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

J. PROTEST POLICY

1. Conditions for Protest:

- a. An aggrieved party may protest the contents of the RCS up to seven (7) calendar days before the solicitation deadline listed on page 1 when the protest is based on alleged mistakes, improprieties or defects. If an aggrieved party submits a protest based on alleged mistakes, improprieties or defects, they must also submit a Response by the solicitation deadline listed on page 1 if they want to be considered for award of the Agreement. Any potential Respondent should identify any alleged mistakes, improprieties or defects through the Q&A process in Section I (K).
- b. Respondents may protest an adverse determination issued by the Procurement Officer regarding whether the Respondent is responsible or its Response is responsive within seven (7) calendar days of the date the Respondent was notified of the adverse determination.
- c. Respondents may protest an award recommendation within seven (7) calendar days of its posting at: <https://solicitations.phoenix.gov/awards>



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

2. Submitting a Protest

- a. Protests received after the protest due dates set forth in this RCS will not be considered, except for Good Cause.
- b. In the event the aggrieved party submits a public records request after receiving the applicable notice but prior to the deadline to file a protest, the Procurement Officer will extend the deadline one day for every day between the day the City receives the public records request and the day the public records are produced, the request is otherwise addressed by the City or a court of competent jurisdiction enjoins disclosure of the requested records.
- c. To be considered, all protests must be submitted in writing and must include:
 - RCS number and title;
 - Name, address, telephone number, and email address of the protester;
 - Detailed statement of the legal or factual basis of the protest including any copies of relevant documents;
 - The relief requested;
 - Signature of the protester or its authorized representative;
 - A Respondent protesting an award recommendation will also establish in its protest that it had a substantial chance of being awarded the Agreements and will be harmed by the recommended award.
- d. The Procurement Officer for the solicitation has the authority to review, decide and settle protests.
- e. Deadlines in the solicitation are not required to be postponed solely on the basis of receiving a solicitation protest. Only upon written notice from the Procurement Officer will a solicitation deadline be postponed, at the City's sole discretion.
- f. The Procurement Officer will issue a protest decision in writing within a reasonable period of time stating the reason for the protest decision and advising the aggrieved party or respondent of its right to appeal in accordance with Phoenix City Code.



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- g. The Procurement Officer will not review any supplements or amendments to a Respondent's original protest or any additional protests submitted by the same Respondent. The Procurement Officer will provide the recommended Respondent copies of award recommendation protest(s) and the City's written decision by fax or email and regular mail with return receipts requested for all methods of delivery.

K. LEGAL WORKER REQUIREMENTS

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

1. RESPONDENT and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of warranty under paragraph 1 will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the RESPONDENT or subcontractor employee(s) who work(s) on the resulting Lease to ensure that RESPONDENT or subcontractor is complying with the warranty under paragraph 1.

L. NON-DISCRIMINATION / EQUAL OPPORTUNITY

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

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

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



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

Compliance with Nondiscrimination Requirements:

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

1. **Compliance with Regulations:** The Successful Respondent (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Successful Respondent, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Successful Respondent will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Successful Respondent for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Successful Respondent of the Successful Respondent's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Successful Respondent will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Successful Respondent will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.



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5. **Sanctions for Noncompliance:** In the event of a Successful Respondent's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

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

- a. Withholding payments to the Successful Respondent under the contract until the Successful Respondent complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Successful Respondent will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Successful Respondent will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Successful Respondent becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Successful Respondent may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Successful Respondent may request the United States to enter into the litigation to protect the interests of the United States.

M. AFFIRMATIVE ACTION COMPLIANCE CERTIFICATION

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

N. NON-DISCRIMINATION / EQUAL OPPORTUNITY

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

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



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

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

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



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VI. EXHIBITS

EXHIBIT 1

DRAFT LEASE

Deer Valley Airport (DVT) Food and Beverage Concession

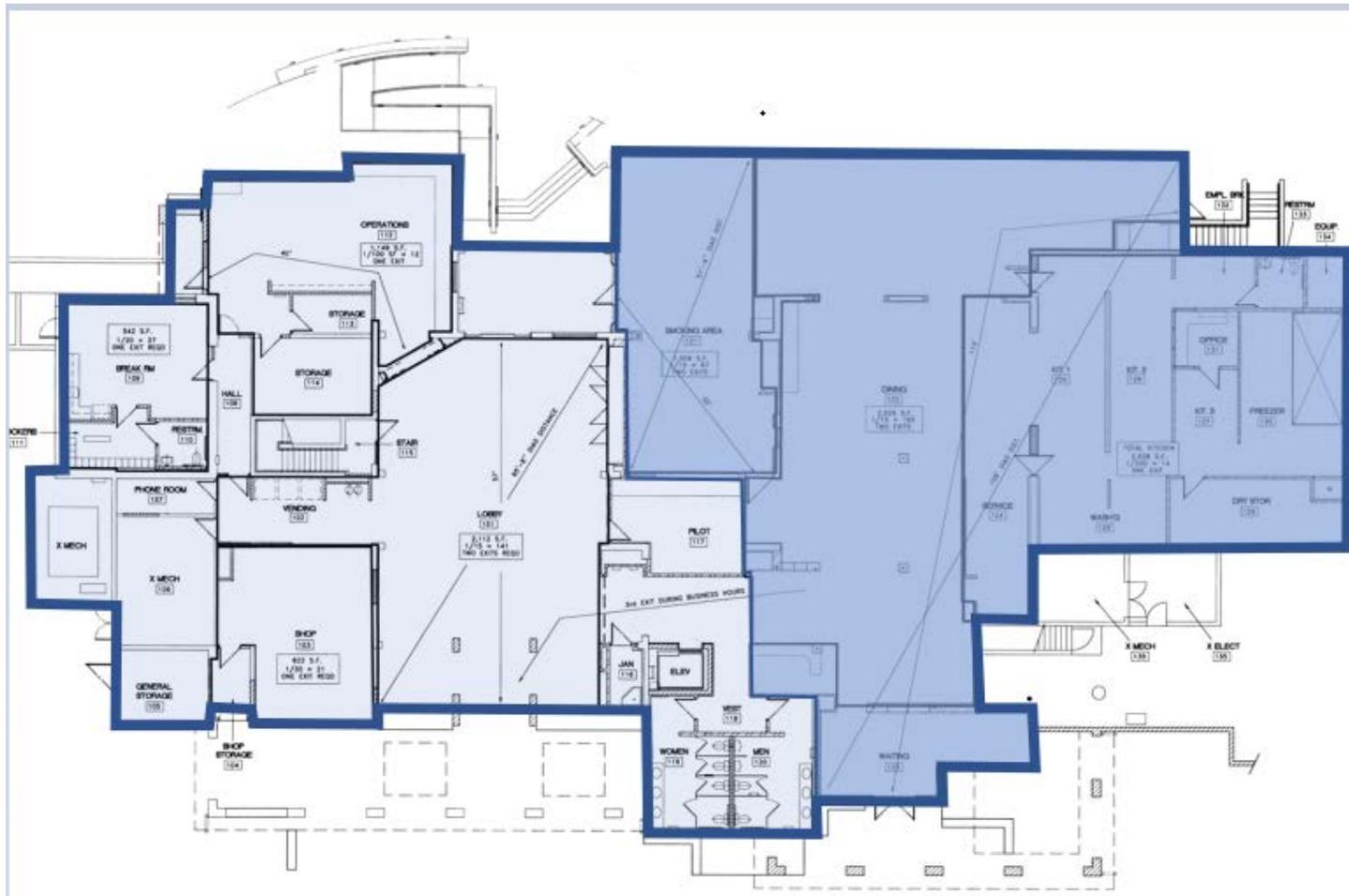
Available at: <https://solicitations.phoenix.gov/Solicitations/Details/822>



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EXHIBIT 2 PREMISE (shaded in dark blue)





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EXHIBIT 3

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

1. Definitions

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

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

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

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

2. Federal Aviation Administration (FAA) Grant Assurances

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

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

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

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

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

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



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into and cause those businesses to similarly include the statements in further agreements.

2.6 Miscellaneous

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

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

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

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

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



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F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

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

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

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

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

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

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

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



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4. **Conflict of Interest**

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

5. **Legal Worker Requirements**

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

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

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

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

6. **City of Phoenix Equal Employment Opportunity Requirement**

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

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment,



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promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

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

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

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

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

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

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).
- B.** 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).



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

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

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

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

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

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

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



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

2068157
Revised 2/1/19



SECTION VI – EXHIBITS

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EXHIBIT 4

AFFIDAVIT

Assurances

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

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

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



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Legal Status

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

Legal Name, dba Trade Name, a Legal Entity



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

Printed Name of Authorized Person: _____

Title: _____

Business Address of Respondent: _____

Telephone: _____ Email: _____

Signature of Authorized Person*: _____

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

NOTARIZED

State of _____ County of _____

This Affidavit was subscribed and sworn to before me this _____ day of _____, 20____ by

_____ (full name of the affiant).

Notary Public (signature)

Affix Notary Seal



SECTION VI – EXHIBITS

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EXHIBIT 5

LETTER OF DECLARATION

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

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

By: _____
Print Name

Signature

Date: _____

PHOENIX CITY CODE (PCC)

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

18-21 Requirements of suppliers and lessees

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

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



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FEDERAL

Equal Pay/Compensation

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

STATE

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

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

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

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

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

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

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

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



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EXHIBIT 6

PROPOSED REMODEL INVESTMENT

Table 1: Proposed Remodel Investment Amount

Proposed Remodel Investment	Proposed Remodel Investment - Written in words
\$ _____	_____

Respondents that propose an amount less than \$100,000.00 will be deemed non-Responsive.

ATTEST:

(Witness Signature)

(Company Name)

BY: _____
(Signature of Chief Financial Officer)

(Printed Name of Chief Financial Officer)

Date: _____

Phone No.: _____



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EXHIBIT 7

PROPOSED FIRST YEAR MINIMUM ANNUAL GUARANTEE (MAG)

Table 1: Proposed First Year Minimum Annual Guarantee (MAG)

Proposed First Year MAG	Proposed First Year MAG - Written in words
\$ _____	_____

Responses that propose an amount less than the First Year Minimum MAG of \$92,000.00 will be deemed non-Responsive.

ATTEST:

(Witness Signature)

(Company Name)

BY: _____
(Signature of Chief Financial Officer)

(Printed Name of Chief Financial Officer)

DATE: _____

Phone No.: _____



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EXHIBIT 8

BUSINESS REFERENCES

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

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

1) Reference Contact Name: _____

Reference Contact Title: _____

Company Name: _____

Address: _____

Phone #: _____ Email: _____

2) Reference Contact Name: _____

Reference Contact Title: _____

Company Name: _____

Address: _____

Phone #: _____ Email: _____

3) Reference Contact Name: _____

Reference Contact Title: _____

Company Name: _____

Address: _____

Phone #: _____ Email: _____



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EXHIBIT 9

CONFLICT OF INTEREST AND SOLICITATION TRANSPARENCY DISCLOSURE FORM

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

1. Name of person submitting this disclosure form.

First: MI: Last: Suffix:

2. Contract Information

Solicitation # or Name:

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

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

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

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

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



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7. Disclosure of conflict of interest:

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

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

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

8. Notice Regarding Prohibited Interest in Contracts

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

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

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

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



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9. Acknowledgements

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

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

10. Fraud Prevention and Reporting Policy

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

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

OATH

PRINT NAME

TITLE

SIGNATURE

DATE

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



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EXHIBIT 10

INSURANCE REQUIREMENTS

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

INDEMNIFICATION CLAUSE:

1. Contractor (Indemnitor) must indemnify, defend, and hold harmless Lessor (City), and its officers, officials (elected or appointed), agents, and employees (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including, but not limited to, court costs, attorney fees, expert fees, and costs of claim processing, investigation, and litigation) of any nature or kind whatsoever (Losses) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent, or willful acts, errors, or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or contractors (Indemnitor’s Agents) arising out of or related to Tenant’s occupancy and use of the Premises or the Airport. This defense and indemnity obligation include holding Indemnitee harmless for any Losses or other amounts arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Premises, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the use, occupancy, or condition of the Premises or the Airport. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Lease.

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 their obligations have been discharged, including any warranty periods under the Lease.



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These insurance requirements are minimum requirements for the Lease and in no way limit the indemnity covenants contained in this RCS. 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 the Lease by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

- A. 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 (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

1. Commercial General Liability – Occurrence Form

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

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

- a. The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the use and/or occupancy of the property subject to this Lease.
- b. Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.
- c. There shall be no endorsement or modification which limit the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- d. City of Phoenix is an additional insured to the full limits of liability purchased by the Lessee.
- e. The Lessee’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried



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by the City.

2. Automobile Liability

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

- Combined Single Limit (CSL) non-airside driving \$1,000,000
 - a. The policy shall not contain any restrictions of coverage with regard to operations on or near the Airport.
 - b. The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out the activities performed by, or on behalf of the Lessee, relating to this Lease.
 - c. City of Phoenix is an additional insured to the full limits of liability purchased by the Lessee.
 - d. The Lessee’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

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

- a. Policy must contain a waiver of subrogation against the City of Phoenix.
- b. 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.

4. Property Insurance

Coverage for Contractor’s leasehold improvements	Replacement Value
Coverage for Contractor’s contents/equipment	Replacement Value

- a. Coverage must be written on a Special Causes of Loss property insurance form with replacement cost value coverage, including coverage for flood and earth movement.
- b. The City of Phoenix must be named as a loss payee on property coverage for Lessee’s leasehold improvements.
- c. Policy must contain a waiver of subrogation against the City of Phoenix.



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5. Crime Insurance – Employee Theft

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

- Crime Policy Limit or Bond Amount: \$10,000

- a. The policy or bond must include coverage for all directors, officers, agents and employees of the Lessee.
- b. The policy or bond must include coverage for third party fidelity, i.e. property of the Lessor that is held by the Lessee in any capacity, or property for which the Lessee is legally liable.
- c. The policy or bond must include but not be limited to coverage for theft of property on the Lease premises or while in transit, loss due to forgery or alteration of negotiable instruments (i.e. securities, checks) or loss due to electronic funds transfer fraud.
- d. The bond or policy shall not contain a condition requiring an arrest and conviction.

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

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

C. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Lease, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to:

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



SECTION VI – EXHIBITS

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

Email: aviation.business@phoenix.gov

- D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract.

The City Department, Lease number and location or description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

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

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

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



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- F. SUBCONTRACTORS:** Contractor's certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Contractor shall furnish to the City separate certificates and endorsements for each contractor or subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Lease must be documented by an executed contract amendment.



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EXHIBIT 11

LETTER OF CREDIT FORM

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

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

Applicant: [REDACTED]
Amount: \$ [REDACTED]
Expiration Date: [REDACTED]

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

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:
 - A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. [REDACTED], or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ [REDACTED].
 - B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. [REDACTED] or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].
 - C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. [REDACTED] will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].



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2. This original Standby letter of credit for endorsement.

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

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

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

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

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

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

[Bank]

By: _____
Authorized Signature



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EXHIBIT 12

CASH DEPOSIT FOR PERFORMANCE GUARANTEE

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

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

Date: [Insert Date]

Amount: [Insert Amount]

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

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

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



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City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated] or [Permit No. _____].

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

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____



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EXHIBIT 13

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

A. SECTION I DEFINITIONS

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

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

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

City means the City of Phoenix.

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

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

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

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



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

EOD means the City of Phoenix Equal Opportunity Department.

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

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

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

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

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

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

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

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

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



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Business Concern” are used interchangeably in this Lease Clause.

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

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

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

B. SECTION II GENERAL REQUIREMENTS

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



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- E. **Civil Rights Assurances**. As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Lease signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

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

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

C. SECTION III REQUIRED OUTREACH EFFORTS

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

D. SECTION IV SUBMITTAL REQUIREMENTS

Documentation due with initial Response.

A. **Form EO1 – Statement of Outreach Commitment**

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

B. **Failure to Submit Form EO1**

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



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SECTION V SMALL BUSINESS OUTREACH GENERAL REQUIREMENTS

Respondent shall actively contact Small Businesses for each scope of work or business opportunity identified for its Small Business Outreach Efforts. Respondent's contact with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Lease.

- A. **At time of submission**, as a matter of responsiveness, **Form EO1, Statement of Small Business Outreach Commitment** must be submitted with the Response.
- B. **Following the award of the contract**, as a matter of compliance, documentation of Small Business Outreach efforts (Forms EO2 and EO3) must be submitted and approved within 60 days after contract award or as specified in the Lease:

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

1. To document its Outreach Efforts, Respondent shall Identify all Small Businesses contacted by Respondent on Form E02. Form EO2 shall be completed with the following minimum information:
 - i. **COLUMN A.** Each business's full legal name and contact information
 - aa. Respondent shall ask each firm to indicate its number of employees
 - bb. For each ACDBE, DBE or Small Business, Respondent shall indicate the **Range of Annual Gross-receipts** for each ACDBE, DBE, small firm proposed (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) *rather than requesting* an exact figure from the firm.
 - ii. **COLUMN B.** Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - iii. **COLUMN C.** Scope of work solicited (brief description, percentage of contract value);
 - aa. Respondent shall detail each scope of work or business opportunity selected for each Small Business;
 - iv. **COLUMN D.** Solicitation method (personal contact, telephone, fax, e-mail, other);



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- v. **COLUMN E.** Selection decision
 - aa. Respondent must indicate if a firm was selected or not. If Respondent does not select an identified Small Business to participate in the Lease, Respondent must explain the reason why.
- vi. **COLUMN F.** Communication of selection outcome to each participant.
 - aa. Respondent shall notify each Small Business contacted whether or not Respondent selected the firm within 15 days after the initial contact. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm.

The Compliance Specialist will evaluate all documented information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts.

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

1. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
2. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
3. Respondent shall submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each Small Business *not* selected for this Lease. This documentation may be in the form of a letter, e-mail, fax, or a telephone log and must show the name of the person contacted and date.
4. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call and the names of the respective persons representing Respondent and the Small Business.



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

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

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

D. Failure to Meet Small Business Outreach Requirements. The Compliance Specialist will determine, in writing, whether Successful Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that the Successful Respondent has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that Successful Respondent is non-compliant.

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

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

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

The Successful Respondent’s waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful



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Respondent shall include with the request all documentation of its attempts to subcontract with Small Businesses and any other action taken to locate and solicit a replacement Small Business.

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

SECTION VI. RECORDS & REPORTING REQUIREMENTS

- A. Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:
1. A complete listing of all Subcontractors and suppliers on the project;
 2. Each Subcontractor's and supplier's scope performed;
 3. The dollar value of all subcontracting work, services, and procurement;
 4. Copies of all executed Subcontracts, purchase orders, and invoices;
 5. Total operating expenses and total costs of goods sales; and
 6. Copies of all payment documentation.
- B. Reports.** The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.
- C. Annual Submittals of Small Business Participation Plan.** As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award or as specified in the Lease. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to



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conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.

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

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

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

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



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EXHIBIT 14

FORM EO1 STATEMENT OF OUTREACH COMMITMENT

(Due with Response submittal)

Solicitation Name:

On behalf of the Respondent, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Respondent, the Successful Respondent will:

- 1) Fulfill all required Small Business Outreach requirements and shall submit all required outreach efforts documentation for contracting opportunities within 60 calendar days of Contract execution;
- 2) Conduct all required small business outreach and will submit all supporting documentation; and
- 3) Comply with the Race - and Gender-Neutral post-award requirements stated in the ACDBE Contract Clause.

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____

Date: _____



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EXHIBIT 15

FORM EO2 SMALL BUSINESS OUTREACH EFFORTS

(Due 60 days after Contract award or as specified in the Lease)

Name of Company (Respondent): [Redacted]	Solicitation Name: [Redacted]	Contract Name: [Redacted]
Email: [Redacted]	Phone #: [Redacted]	Point of Contact: [Redacted]

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

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision	(F) Communication Final Selection Outcome*
Name: [Redacted] Address: [Redacted] City, State, Zip: [Redacted] Number of Employees: [Redacted] Phone Number: [Redacted] Email or Fax: [Redacted] Number of Years in Business: [Redacted] Range of Annual Gross Receipts: [Redacted]	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____	Date Firm was Notified: [Redacted] Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name: [Redacted] Address: [Redacted] City, State, Zip: [Redacted] Number of Employees: [Redacted] Phone Number: [Redacted] Email or Fax: [Redacted] Number of Years in Business: [Redacted] Range of Annual Gross Receipts: [Redacted]	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____	Date Firm was Notified: [Redacted] Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person

*Firms must be notified of final selection outcome prior to submittal of this form.



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EXHIBIT 16

FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT

(Due 60 days after Contract award or as specified in the Lease)

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

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

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

_____ %

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____ Date: _____



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EXHIBIT 17

COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws that apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's agents, officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, ordinances, and FAA advisory circulars and guidance documents promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.



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D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.

F. Clean Air Act, 42 U.S.C. §§ 7401-7515.

G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.

H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.

I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.

J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.

K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.

L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.

M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).

N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.

O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.

P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.

Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.

R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).



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S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.

T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).

U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M



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(iii) NESHAP Notification Form and Delivery Requirement A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even when no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or may result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and the Clean Water Act.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness 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 any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance this is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately



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found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any 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” has the meaning prescribed above; (c) “Fault” means those nonculpable acts and omissions giving rise to strict liability 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, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 Contractor or Contractor’s Agents Release any Regulated Substance on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment. Subject to the City’s prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release. Contractor shall undertake its remedial actions without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor’s rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law related to Contractor’s use or occupancy of the Premises. Contractor’s obligation includes any requirement for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance on the Premises or the Airport.

2.6 After giving Contractor at least ten (10) days prior notice, the City may inspect and copy all of Contractor’s records, test results, studies, and other documents regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.



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2.7 Contractor shall immediately notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and present evidence thereof to the City.

2.11 Contractor shall take all reasonable precautions to prevent persons not acting under Contractor's authority, direction, or control from conducting any activity that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default within the time period provided in this Contract, if any, shall constitute a material breach of this Contract. Upon a breach, the City may pursue any and all remedies



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available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

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

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge



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Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws, the Aviation Stormwater Policy, or as determine by the City. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix



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City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City’s manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City’s project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a “co-permittee” with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor’s written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports’ SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor’s use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.



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C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have ten (10) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within ten (10) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.



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4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

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Revised 5-21-2020



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EXHIBIT 18

TENANT DESIGN CRITERIA (DESIGN MANUAL)

[https://www.skyharbor.com/docs/default-source/pdfs/for-tenants-contractors/phx-dvt-gyr-design-manual-\(october-2018\).pdf?sfvrsn=2f1a6a89_0](https://www.skyharbor.com/docs/default-source/pdfs/for-tenants-contractors/phx-dvt-gyr-design-manual-(october-2018).pdf?sfvrsn=2f1a6a89_0)