



**CITY OF PHOENIX
PUBLIC TRANSIT DEPARTMENT**

**REVENUE CONTRACT SOLICITATION (“RCS”)
RCS PTD21-002 (JH)**

STREET FURNITURE AND BUS ADVERTISING SERVICES

**Procurement Officer:
Daniel Rice
302 N. 1st Avenue, Suite 900
Phoenix, AZ 85003
PTDprocurement@phoenix.gov**

Issue Date: July 14, 2021



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Phoenix, AZ 85003**

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**SECTION I – SOLICITATION
INSTRUCTIONS**

**CITY OF PHOENIX
PUBLIC TRANSIT DEPARTMENT**

**302 N. 1st Avenue, Suite 900
Phoenix, AZ 85003**

Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist offerors, but offerors are expected to read and comply with the entire solicitation.

SOLICITATION RESPONSE CHECK LIST

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

- All forms have been completed and signed, including Solicitation Disclosure form.
- All of Section VI, Submittals, are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- Checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the physical submittal to the Procurement Officer on the solicitation front page, at the address listed.
- The physical submittal clearly indicates your company name and address, the solicitation number, and the offer opening date.
- Physical submittal delivered in time – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.

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1.1. INTRODUCTION

The City of Phoenix Public Transit Department (CITY) invites sealed offers from qualified proposers for street furniture and bus advertising services, in accordance with the specifications and provisions contained herein.

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

Copies of the current contract and associated amendments may be obtained from the City Clerk by calling 602-262-6811 or emailing the Clerk’s office at mailbox.city.clerk.department@phoenix.gov; reference Contract No. 143743 and 143744.

1.2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION

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

1.3. SCHEDULE OF EVENTS

ACTIVITY (All times are local Phoenix time)	DATE
Pre-Offer Conference	July 20, 2021 at 10:00 AM MST (Phoenix local time) WebEx Video Conference Registration Required: Send email to PTDprocurement@phoenix.gov Registration Deadline: July 19, 2021
Written Inquiries Due Date	July 28, 2021 at 2:00 PM MST (Phoenix local time) PTDprocurement@phoenix.gov

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Offer Due Date and Submittal Location	August 11, 2021 at 2:00 PM MST (Phoenix local time) Physical Submittal: City of Phoenix Public Transit Department 302 N. 1 st Avenue, Suite 900 Phoenix, AZ 85003
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The CITY reserves the right to change dates and/or locations as necessary.

1.4. PREPARATION OF OFFER

- 1.4.1. All forms provided in Section VI – Submittals, must be completed and submitted with your offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 1.4.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The CITY is not responsible for Offeror’s errors or omissions.
- 1.4.3. All time periods stated as a number of days will be calendar days.
- 1.4.4. It is the responsibility of all offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
 - 1.4.4.1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 1.4.4.2. Study and carefully correlate Offeror’s knowledge and observations with the RCS document and other related data.
 - 1.4.4.3. Promptly notify the CITY of all conflicts, errors, ambiguities, or discrepancies which an offeror has discovered in or between the RCS document and such other related documents.
 - 1.4.4.4. The CITY does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this

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solicitation. All materials and documents submitted in response to this solicitation become the property of the CITY and will not be returned.

- 1.4.4.5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 1.4.4.6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer’s catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City’s use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 1.4.4.7. Prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

1.4.5. Unless the solicitation specifically allows, omissions or alterations of electronic spreadsheet price proposals will be sufficient grounds for the CITY to consider your offer to be non-responsive.

1.5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/> Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer. It is the Offeror’s responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

1.6. OFFEROR EXCEPTIONS

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the CITY’s sole discretion. Offerors must conform to all the requirements specified in the solicitation. The CITY encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer.

1.7. INQUIRIES

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The CITY will not consider questions received after the deadline.

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

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

1.8. ADDENDA

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

1.9. BUSINESS IN ARIZONA

The CITY will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the offeror asserts a statutory exception prior to entering a contract with the CITY.

1.10. LICENSES

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

1.11. CERTIFICATION

By signature in the offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The Offeror shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

1.12. SUBMISSION OF OFFER

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department’s clock.

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Offers must be submitted in the following way:

1.12.1. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

- Offeror’s Name
- Offeror’s Address (as shown on the Certification Page)
- Solicitation Number
- Solicitation Title
- Offer Opening Date

Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.

Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the offer for which it is attributed.

1.13. MODIFICATION OR WITHDRAWAL OF OFFER

An offer may not be modified, withdrawn or canceled by an Offeror for 180 calendar days following the offer submission deadline and, by submitting an offer, each Offeror agrees to keep the offer firm for that period of time.

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the offer electronically by email to PTDprocurement@phoenix.gov the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative’s signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

1.14. OFFER RESULTS

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

The CITY will post a preliminary offer tabulation on the CITY’s website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The CITY will post the information on the preliminary tabulation as it was read during the offer opening. The CITY makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the CITY has evaluated the offers, the CITY will post an

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award recommendation on the website. The CITY may not provide any further notification to unsuccessful Offerors.

1.15. PRE-AWARD QUALIFICATIONS

- 1.15.1. Offeror represents that it is familiar with the nature and extent of this contract, the services, and any conditions that may affect its performance under this contract. Offeror further represents that it is fully experienced and properly qualified, complies with all applicable license requirements, and is equipped, organized, and financed to perform such services.
- 1.15.2. Offeror must have been in operation for a minimum of three years. The Offeror's normal business activity during the past three years will have been for providing the goods and services in this solicitation.
- 1.15.3. Upon notification of an award the Offeror will have five calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

1.16. AWARD OF CONTRACT

- 1.16.1. Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.
- 1.16.2. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- 1.16.3. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Deputy Finance Director or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

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

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

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1.18. SOLICITATION TRANSPARENCY POLICY

- 1.18.1. Commencing on the date and time a solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the CITY’s intent to reissue the same or similar solicitation.
- 1.18.2. As long as the solicitation is not discussed, Offerors may continue to conduct business with the CITY and discuss business that is unrelated to the solicitation with the CITY staff. Offerors may not discuss the solicitation with any CITY employees or evaluation panel members.
- 1.18.3. Offerors may discuss their offer or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- 1.18.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager’s Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager’s Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- 1.18.5. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the CITY for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 1.18.6. “To discuss” means any contact by the Offeror, regardless of whether the CITY responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the CITY’s intent to reissue the same or a similar solicitation. The CITY interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the CITY cancels with a statement that the CITY will rebid the solicitation.

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1.19. PROTEST PROCESS

- 1.19.1. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the CITY. If denied, the opening and award will proceed unless the CITY determines that it is in the CITY’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 1.19.2. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 1.19.3. Offeror may protest an adverse determination issued by the CITY regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 1.19.4. Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The CITY will post recommendations on the CITY’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the CITY’s full and final discretion.
- 1.19.5. All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
 - Identification of the solicitation number;
 - The name, address and telephone number of the protester;
 - A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
 - The form of relief requested; and
 - The signature of the protester or its authorized representative.
- 1.19.6. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The CITY will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City’s Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

1.20. PUBLIC RECORD

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an

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

1.21. LATE OFFERS

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

1.22. RIGHT TO DISQUALIFY

The CITY reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The CITY further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the CITY. This disqualification is at the sole discretion of the CITY. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the CITY or any court as to the exercise by the CITY of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the CITY. The CITY reserves the right to replace the disqualified Offeror.

1.23. SITE VISIT

Offerors are strongly encouraged to visit the publicly accessible areas of each location prior to submission of their Offer.

1.24. CONTRACT AWARD

The CITY reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the CITY. The CITY reserves the right to multiple award.

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1.25. EVALUATION OF COMPETITIVE SEALED OFFERS:

The CITY will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

1.26. DETERMINING RESPONSIVENESS AND RESPONSIBILITY

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

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1.27. CLARIFICATIONS

The CITY may request written clarifications for such purposes as information gathering or eliminating minor informalities in offers. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change their offers.

1.28. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE

The CITY will appoint an Evaluation Panel, which may consist of CITY staff, staff from other CITY departments or transit agencies, and other persons. The CITY may also appoint a Technical Advisory Team to provide technical assistance to the Evaluation Panel. The Technical Advisory Team may consist of CITY staff, staff from other CITY departments or transit agencies, and other persons. The Technical Advisory Team will evaluate the technical portion of each offer for compliance with the RCS specifications. The Procurement Officer will chair the Evaluation Panel, serving in a non-voting capacity.

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

1.29. OFFERS NOT WITHIN THE COMPETITIVE RANGE

The CITY may notify Offerors of Offers that the CITY determined are not in the Competitive Range.

1.30. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE

1.30.1. The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

1.30.2. Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

1.30.3. If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions,

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reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

- 1.30.4. To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

1.31. BEST AND FINAL OFFERS (BAFO)

- 1.31.1. A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the CITY’s sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.
- 1.31.2. If an Offeror’s BAFO modifies its initial offer, the BAFO should include a “Change Log” identifying all modifications made to the Offer. The CITY will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The CITY will adjust appropriately, at its sole discretion, the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the CITY will then perform final scoring and prepare final rankings.
- 1.31.3. The Evaluation Panel will recommend the Offer that is the most advantageous to the City based on the evaluation criteria.
- 1.31.4. The CITY reserves the right to make an award to an Offeror whose Offer is the highest rated and most advantageous to the CITY based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

1.32. STATEMENT OF BONDING ABILITY

Offerors must submit a letter from a bonding or insurance company stating that the Offeror can qualify for and procure the performance and/or payment surety required in this solicitation. Submittals received without the required statement of ability to secure a performance or payment surety may be considered as non-responsive. Offerors anticipating the submittal of a cash surety in lieu of a bond should submit a statement notifying the City.

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1.33. PERFORMANCE BOND

A performance surety in the amount of \$1,000,000 as security for the faithful management of the CITY’s Transit Street Furniture Advertising Program and in the amount of \$1,000,000 as security for the faithful management of the CITY’s Bus Advertising Program, which shall be provided by the Contractor immediately after notice of award. The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Procurement Officer. The performance surety must be in the form of a bond, cashier’s check, certified check or money order. Personal or company checks are not acceptable unless certified. If surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor, and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.

Failure to perform shall be determined solely by the CITY based upon the Contractor’s schedule, sales activity and experience in performing routine required installations and removals. Should the CITY determine the Contractor to be unable to perform his responsibilities to the CITY, the CITY shall have the right to assign the program to another firm or to terminate the entire program. In either case, ownership of all transit assets, shelters and other devices shall remain with the CITY. All revenues to be derived from these structures shall be collected by the CITY with no consideration to the Contractor.

1.34. OFFER SUBMITTAL FORMAT

The written offer may not exceed 35 single-sided pages, exclusive of the following items:

- a. Cover Letter
- b. Price Proposal
- c. Financial Information
- d. Required Submittal Forms

Additionally, the written offer should be:

- 1.34.1. Typewritten for ease of evaluation
- 1.34.2. Signed by an authorized representative of the Offeror;
- 1.34.3. Submitted with contact information for the individual(s) authorized to negotiate with the City;
- 1.34.4. Submitted in a binder, preferably using double-sided copying and at least 30% post-consumer content paper;
- 1.34.5. Each offer package submitted must contain the following **separately sealed portions**:
 - Technical Proposal.
 - Price Proposal and Financial Information.

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1.35. TECHNICAL PROPOSALS

The Technical Proposal must be organized in a tabular format and divided by sections, in accordance with the outline below. If the Offeror fails to provide all data requested, the CITY may deem the Offer non-responsive.

In the Technical Proposal, the Offeror shall demonstrate evidence of satisfactory past performance of contracts of similar size, scope and complexity. The Offeror shall also reasonably demonstrate evidence that its human and physical resources are sufficient to meet the requirements of the Contract, as specified, and to ensure the level of service required, including sufficient personnel in the requisite disciplines and all necessary licenses, skills, experience and equipment to complete the Contract as required.

Tab 1 – Method of Approach (450 Points)

Required Components

1. Provide a comprehensive, realistic transition plan describing the proposed approach for commencement of service. The plan must minimally include the following items:
 - a. A detailed chronology/calendar and explanation of all major milestones
 - b. A list and description of all other activities necessary to implement a successful transition.

2. Describe the proposed approach to handle the oversight and day-to-day tasks to meet the requirements of the advertising program.
 - a. Provide a Business and Sales Plan describing how the transit advertising program will be marketed to gain the maximum price for advertising placements.
 - b. Provide a sample weekly advertising installation and removal schedule including the staffing and equipment resources required to accomplish the work. Identify the minimum number of staff and job titles to be assigned to carry out the required scope of work. Identify any work to be outsourced to subcontractors.
 - c. Provide a schedule and description of the maintenance plan for the street furniture advertising hardware (plexiglass/lightbulbs) and/or the bus advertising (defects, wrinkles, air pockets, etc.).
 - d. Provide a sample monthly quality control report and/or describe the proposed quality control program.

Tab 2 – Qualifications and Experience (200 Points)

Required Components

1. Identify the Project Manager (PM) to be assigned to this project and provide a resume detailing the PM’s qualifications and experience. Include the following details:

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- a. Number of years of experience in advertising management and the specific types of advertising
 - b. Number of years of transit-specific advertising experience and the details of each advertising project
2. Provide detailed descriptions of three past advertising management projects within the past five years. Each experience must be with a different client and no City of Phoenix projects may be listed. Prior experiences with transit advertising, if any, should be included. The following minimum details must be included with each description:
- a. Describe the type of advertising, number of placements, and net sales revenue.
 - b. Provide an overview of the work performed for the client that is similar to the scope of this project.
 - c. Provide an explanation of challenges encountered during the project term with the clients or advertisers and how they were resolved.

The City will contact each client to conduct a reference check. Provide the name of the client, contact person, current telephone number and email address, and dates of service in Section VI Submittals – Reference Check Form.

Tab 3 - Required Submittal Forms

- Years in Business Certification (Section 6.3)
- Addenda Certification (Section 6.4)
- Reference Check Form (Section 6.5)
- Contract Disclosure Form (Section 6.6)
- Offer Form (Section 6.7)

1.36. PRICE PROPOSAL AND FINANCIAL INFORMATION

Tab 1 – PRICE PROPOSAL (350 Points)

Required Components

1. Complete Section VI – Submittals, Subsection 6.2 *Price Proposal*.
2. Statement of Bonding Ability

Tab 2 – Financial Information

The CITY Auditor or other designated personnel will independently review this category. This category will not be scored but will be reviewed to determine the financial responsibility of the Offeror. Unless an Offeror’s financial responsibility can be fully verified and documented, the CITY will deem its offer non-responsive. Each Offeror shall submit the following financial information with its Price Proposal and Financial Information.

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Required Components

Offers received without the required documents may be considered non-responsive.

1. State whether any participant in the offer has ever filed bankruptcy proceedings. If so, state the date, jurisdiction, amount of liabilities, and amount of assets. Provide this information on a separate statement with the heading "BANKRUPTCY INFORMATION."
2. Provide detailed information regarding litigation, liens, or claims that exceed \$10,000 and may result in litigation against any participant.
3. Provide the Offeror's audited financial statements for the last three (3) years. If Offeror is a partnership, submit financial statements for each partner.

The financial statements must be prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Offeror is domiciled and which statements must be audited by an independent, certified public accountant.


If audited statements are not available, the CITY may require Offeror to submit other reliable financial information satisfactory to the CITY.

4. Provide evidence of Offeror's ability to obtain the specified amounts of insurance from an insurance company with an "A.M. Best" rating of not less than B+ VI authorized to do business in Arizona.
5. Describe financial capacity to perform the required services, strength and stability of the firm.

1.37. OFFER EVALUATION CRITERIA


In accordance with the Administrative Regulation, 3.10, awards shall be made to the responsible offeror whose offer is determined in writing to be the most advantageous to the CITY based upon the evaluation criteria.

Evaluation Criteria (Max 1000 points)	Points
1. Method of Approach	0-450 Points
2. Price Proposal	0-350 Points
3. Qualifications and Experience	0-200 Points

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2.1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

Shall, Will, Must:	Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
Should:	Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the CITY may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
May:	Indicates something that is not mandatory but permissible.
For purposes of this solicitation, the following definitions shall apply:	
"ADA"	Americans with Disabilities Act Amendments Act of 1990
"A.R."	City of Phoenix Administrative Regulation
"A.R.S."	Arizona Revised Statute
"Buyer or Procurement Officer"	City of Phoenix staff person responsible for the solicitation. The CITY employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for ensuring compliance with the terms of the Contract.
"City"	The City of Phoenix
"Contractor"	The individual, partnership, or corporation who, as a result of the competitive process, is awarded a Contract by the City of Phoenix.
"Contract/Agreement"	The legal agreement executed between the City of Phoenix, AZ and the Contractor.
"Days"	Means calendar days unless otherwise specified.
"Employer"	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).
"EPA"	Environmental Protection Agency.
"Offer"	Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.
"Offeror"	Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
"Phoenix Public Transit Department"	A department within the City of Phoenix that owns and operates

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	transit service for the City; the largest member of the regional transit system (Valley Metro).
"Public Transit Director"	The person who has the capacity to execute the Contract for the CITY and has complete and final authority except as limited herein.
"Solicitation"	Means this Revenue Contract Solicitation (RCS).
"Suppliers"	Firms, entities or individuals furnishing goods or services directly to the City.
"Vendor or Seller"	A seller of goods or services.
"Working Days"	Normal business days of City offices, unless otherwise specifically noted.

2.2. CONTRACT INTERPRETATION

2.2.1. APPLICABLE LAW

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


2.2.2. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the CITY and as they may be amended, the following will prevail in the order set forth below:

- 2.2.2.1. Special terms and conditions
- 2.2.2.2. Standard terms and conditions
- 2.2.2.3. Amendments
- 2.2.2.4. Statement or scope of work
- 2.2.2.5. Specifications
- 2.2.2.6. Attachments
- 2.2.2.7. Exhibits
- 2.2.2.8. Instructions to Contractors
- 2.2.2.9. Other documents referenced or included in the Solicitation

2.2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER

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

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2.2.4. SEVERABILITY

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

2.2.5. NON-WAIVER OF LIABILITY

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

2.2.6. PAROL EVIDENCE

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

2.3. CONTRACT ADMINISTRATION AND OPERATION

2.3.1. RECORDS

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

2.3.2. DISCRIMINATION PROHIBITED

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

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



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demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

2.3.3. EQUAL EMPLOYMENT OPPORTUNITY AND PAY

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

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

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

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

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

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

2.3.4. LEGAL WORKER REQUIREMENTS

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

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

2.3.4.2. A breach of a warranty under paragraph 2.3.4.1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

2.3.4.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 2.3.4.1.

2.3.5. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS

The Contractor’s products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the CITY.

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

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

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



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

2.3.6. COMPLIANCE WITH LAWS

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

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

2.3.7. LAWFUL PRESENCE REQUIREMENT

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

2.3.8. CONTINUATION DURING DISPUTES

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

2.3.9. EMERGENCY PURCHASES

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

2.4. COSTS AND PAYMENTS

2.4.1. GENERAL

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or



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services within 30 to 45 calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.

2.4.2. PAYMENT DEDUCTION OFFSET PROVISION

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

2.4.3. LATE SUBMISSION OF CLAIM BY CONTRACTOR

The CITY will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

2.4.4. DISCOUNTS

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

2.4.5. NO ADVANCE PAYMENTS

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

2.4.6. FUND APPROPRIATION CONTINGENCY


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

2.4.7. MAXIMUM PRICES

The CITY will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the CITY of such price reductions.

2.4.8. F.O.B. POINT

All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.

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2.5. CONTRACT CHANGES

2.5.1. CONTRACT AMENDMENTS

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

2.5.2. ASSIGNMENT – DELEGATION

No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

2.5.3. NON-EXCLUSIVE CONTRACT

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

2.6. RISK OF LOSS AND LIABILITY

2.6.1. TITLE AND RISK OF LOSS

The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

2.6.2. ACCEPTANCE

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

2.6.3. FORCE MAJEURE

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



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

2.6.4. LOSS OF MATERIALS

The CITY does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until Contract expiration. Any such loss, injury or destruction will not release Contractor from any obligations under the Contract.

2.6.5. CONTRACT PERFORMANCE

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

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

2.6.6. DAMAGE TO CITY PROPERTY

Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

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

2.7. CITY'S CONTRACTUAL RIGHTS

2.7.1. RIGHT TO ASSURANCE



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

2.7.2. NON-EXCLUSIVE REMEDIES

The rights and remedies of the City under this Contract are non-exclusive.

2.7.3. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH

Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

2.7.4. ON TIME DELIVERY

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

2.7.5. DEFAULT

In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

2.7.6. COVENANT AGAINST CONTINGENT FEES


Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the CITY will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

2.7.7. COST JUSTIFICATION

In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.

2.7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are

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“works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

2.8. CONTRACT TERMINATION

2.8.1. GRATUITIES


The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

2.8.2. CONDITIONS AND CAUSES FOR TERMINATION

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

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

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

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- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

2.8.3. CONTRACT CANCELLATION

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

2.9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES


In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the CITY shall not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective Offeror to determine any applicable taxes. The CITY will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the CITY provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at [Phoenix Tax Division](#) or [State of AZ Department of Revenue](#) Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the CITY finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the CITY for that amount, and by contracting with the CITY agrees to remit any overpayments back to the CITY for miscalculations on taxes included in an Offer price.

2.10. TAX INDEMNIFICATION

Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the CITY harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation, and require the same of all subcontractors.

2.11. TAX RESPONSIBILITY QUALIFICATION

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or

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Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

2.12. NO ISRAEL BOYCOTT

By entering into this contract, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.

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3.1. TERM OF CONTRACT AND OPTION TO EXTEND

The initial Contract shall commence on or about January 1, 2022 and end December 31, 2027. The CITY may, at its sole option, extend the period of this contract up to two additional years in increments of up to one year.

3.2. SUPPLIER PROFILE CHANGES

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor’s legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

3.3. AUTHORIZED CHANGES

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) locations; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director or Department Director prior to the institution of the change.

3.4. ADDITION OR DELETION OF SERVICES

The CITY reserves the right to add and/or delete services and/or locations under the Contract. If service levels increase or decrease the cost will be adjusted in accordance with the contract price.

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

3.5. SUSPENSIONS OF WORK

The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

3.6. HOURS OF WORK

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All work under this contract shall be coordinated with the Transit Contract Manager. Any changes to the established schedule must have prior written approval by the Transit Contract Manager.

3.7. INDUSTRY STANDARDS

It is intended that Contractor, in the selection of equipment and methods, will use practices that are the best available in the industry for the type of services Contractor is responsible for providing in this contract.

3.8. TYPES OF WORK SUPERVISION

Contractor shall provide on-site supervision and appropriate training to assure competent performance of the work and Contractor or authorized agent will make sufficient daily routine inspections to ensure the work is performed as required by this contract. Contractor’s job manager, supervisor and at least one employee on-site must be able to read job instructions and signs, as well as write and converse in English with management personnel.

It is mandatory that the lead person assigned to any facility be able to speak, read and write in English in order to communicate with the site contact.

3.9. EQUIPMENT/SAFETY

Contractor shall be responsible for providing and for the placement of barricades, tarps, plastic, flag tape and other safety/traffic control equipment required to protect its employees, the public, surrounding areas, equipment and vehicles (**see Exhibit E – Right of Way Management Program**). The Contractor and its employees must comply with the most current City of Phoenix Traffic Barricade Manual available on the CITY’s website: <https://www.phoenix.gov/streets/traffic-management>. The flow of vehicular traffic shall not be impeded at any time during this project. The safety of Contractor's employees and the public is of prime concern to the CITY, and Contractor must take all necessary steps to assure proper safety during the performance of Contractor.

3.10. POST AWARD CONFERENCE

Contractor shall attend a post award conference to be held by the Transit Contract Manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

3.11. PERFORMANCE INTERFERENCE

Contractor shall notify the Transit Contract Manager immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

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3.12. ADVERTISING

Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director or Public Transit Director, and the City will not unreasonably withhold permission.

3.13. EXCLUSIVE POSSESSION

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

3.14. STRICT PERFORMANCE

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

3.15. LICENSES AND PERMITS

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

3.16. PROCUREMENT REPORTS

Contractor shall submit procurement reports upon request in an electronic format acceptable to the City during the term of this contract and any extensions commencing one month after start period.

3.17. COMMUNICATION IN ENGLISH

It is mandatory that the Contractor’s lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

3.18. CONTRACTOR ASSIGNMENTS

The Contractor hereby agrees that any of its employees who may be assigned to a City site to satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this contract and shall perform no work at other City facilities. If other services, in addition to or separate from, the services specified herein, may be deemed necessary by the Deputy Finance Director or Department Director or his authorized representative, the Contractor may be requested to perform the additional or special service.

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3.19. BACKGROUND SCREENING:

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

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

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

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

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

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



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- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

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

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

Unless otherwise provided for in the scope of work:

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

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

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

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

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

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

3.20. BACKGROUND SCREENING – MAXIMUM RISK

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

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

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



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- City data centers, money rooms, high-voltage equipment rooms; or
- unescorted access to private residences; or
- access to critical infrastructure sites/facilities; or
- direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

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

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

- determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- submitting pass/fail results to the City for approval; and,
- reviewing the results of the background check every three to five years, dependent on scope; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department; and,
- If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- The City final documented decision will be an "approve" or "deny" for identified Contract Workers.
- The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the

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Contractor, or any contracted agency that assists with review, after the City's completed review.

- By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City's written acceptance of Contract Worker's maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city's prior written approval.

3.21. CONFIDENTIALITY AND DATA SECURITY

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.

Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

3.22. SECURITY INQUIRIES

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected

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by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City’s prior approval.

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

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

3.23. CONTRACT REVIEWS

The CITY will conduct monthly compliance reviews or as often as it deems prudent. The review with Contractor is to discuss any previous and upcoming issues. Contractor will be notified of the exact time and place of each meeting.

3.24. CLEANING

Contractor shall keep the premises clean of all rubbish and debris generated by the work involved and shall leave the premises neat and clean. The work area shall be cleaned at the end of each work day.

The CITY is not responsible for theft or damage to Contractor's property. All possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each work day. If there is a question in this area, the CITY’s Transit Contract Manager will be consulted.

3.25. DAMAGE TO CITY PROPERTY

Contractor shall perform all work so that no damage to the CITY’s properties, buildings, or grounds results. Contractor shall repair any damage caused to the CITY’s satisfaction at no cost to the CITY.

Contractor shall exercise care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish to match existing materials as approved by the CITY at Contractor’s expense.

3.26. PROFESSIONAL COMPETENCY

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Services provided by Contractor will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor’s profession currently practicing in the same industry under similar conditions. Acceptance or approval by the CITY of Contractor’s work will in no way relieve Contractor of liability to the CITY for damages suffered or incurred arising from the failure of Contractor to adhere to the previously mentioned standard of professional competence.

3.27. TRANSITION COOPERATION AGREEMENT

Contractor recognizes that the services under the Contract are vital to the City and must be continued without interruption. Upon expiration, termination or other conclusion of the Contract and of Contractor’s rights and duties under it, the parties anticipate that a successor provider may be selected by the City to perform the same or similar work. The successor provider may be Contractor or some other individual, firm or entity.

If the successor provider is an individual, firm or entity (other than Contractor) then Contractor shall cooperate fully with the successor provider to effect a smooth and seamless transition. This cooperation must include the following.

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

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- If transferred employees are required to undergo training, Contractor shall work with the successor as to agreeable dates/times employees may be allowed to attend training session(s).

Until the date that the successor provider assumes its contractual duties, Contractor shall fully and conscientiously perform its obligations under the Contract in a professional and workman-like manner.

3.28. CONTRACT CLOSEOUT

At the end of the Contract, the CITY shall review the Contract to ensure all required deliverables have been met. This includes, but is not limited to, an audit of Contractor’s financial and operational records and an inspection of all City equipment provided to Contractor. Any outstanding issues must be resolved within thirty (30) days of Contract completion, at which time a Notice of Contract Closure must be sent by the City to finalize the Contract closure between the parties. Contractor shall keep all Contract-related records for a minimum of five (5) years after Contract completion, expiration or termination. Upon twenty-four (24) hour notice, Contractor shall make available all records to the City or its agents for audit during normal business hours. In the event of litigation or claims related to the Contract, Contractor shall maintain all records until the litigation or claim is concluded or five (5) years after the end of the Contract, whichever last occurs.

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4.1 DEFENSE AND INDEMNIFICATION:

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix 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, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses 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 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 of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

4.2 CONTRACTOR’S INSURANCE:

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 this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

4.2.1 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 liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

4.2.2 Commercial General Liability – Occurrence Form

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

- The policy must 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 activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- Policy must be endorsed to include coverage for “care, custody & control”.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

4.2.3 Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

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4.2.4 Worker’s Compensation and Employers’ Liability

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

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

4.2.5 Crime Insurance (or Fidelity Bond)

Bond or Policy Limit	\$1,000,000
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- The policy or bond must include coverage for all directors, officers, agents and employees of the Contractor.
- The policy or bond must include coverage for third party fidelity, i.e. property of third parties that is held by the Contractor in any capacity, or property for which the Contractor is legally liable.
- The policy or bond must include but not be limited to coverage for theft of property located on the Contractor’s premises or while in transit, loss due to forgery or alteration of negotiable instruments (e.g. securities, checks) or loss due to electronic funds transfer fraud.
- The policy or bond must not contain a condition requiring an arrest and conviction.

4.3 NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, 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 must be mailed, emailed, or hand delivered to City of Phoenix Public Transit Department, Attn: Christine Adrian, 302 North 1st Avenue, Suite 900, Phoenix, AZ 85003

4.4 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

	<p style="text-align: center;">SECTION IV – INSURANCE AND INDEMNIFICATION</p>	<p style="text-align: center;">CITY OF PHOENIX PUBLIC TRANSIT DEPARTMENT</p> <p style="text-align: center;">302 N. 1st Avenue, Suite 900 Phoenix, AZ 85003</p>
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than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

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

All certificates required by this Contract must be sent directly to City of Phoenix Public Transit Department: ptdprocurement@phoenix.gov. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

- 4.6 SUBCONTRACTORS:** Contractor’s certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.
- 4.7 APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

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5.1 PURPOSE

Provide management of the transit street furniture and bus advertising programs for the City of Phoenix Public Transit Department (CITY).

5.2 BACKGROUND

The transit street furniture and bus advertising programs are revenue generating programs for the CITY (*see Exhibit D – Historical Sales Data*). The purpose of these programs is to generate maximum revenue for the CITY to enhance the passenger services it provides via the public transit system. Contractor shall use its best efforts to sell all available advertising space to generate the highest advertising revenues possible. Contractor, on behalf of CITY, shall manage and take full responsibility for the transit furniture advertising and/or bus advertising programs for the CITY. Work under this Contract shall consist of the management of the sale of advertising, production, installation/removal of advertising materials, maintaining advertising display space in satisfactory condition to meet advertising client and CITY expectations, as well as ensuring CITY assets are handled and maintained properly.

The CITY jurisdictional boundaries encompass approximately 520 square miles, in which there are currently approximately 38 Phoenix operated bus routes of various types and lengths. Valley Metro Rail and the Regional Public Transportation Authority are non-CITY agencies that are identified as part of the Valley Metro public transit system. The CITY is also part of the Valley Metro public transit system, but only property and services under the control of the CITY shall be subject to this Agreement.

The CITY owns all existing transit street furniture and bus assets and shall make the entire inventory of advertising assets available to Contractor.

Contractor shall be responsible for all costs associated with installation, maintenance, and restoration of advertising pertaining to bus and/or transit furniture which shall be accomplished with Contractor’s personnel.

5.3 TRANSIT STREET FURNITURE ADVERTISING PROGRAM

The CITY installs transit street furniture primarily for the comfort of passengers using the public transit system. Location and choice of transit street furniture is usually determined by ridership need, availability of resources, and location feasibility. Typically, the CITY intends to have transit advertising furniture at those bus stops with the highest transit ridership, subject to CITY restrictions, that are also large enough to physically accommodate the furniture. The CITY recognizes the advantage of the Transit Street Furniture Advertising Program in generating revenue but expects Contractor to maintain a professional advertising environment with minimal interference or disruption to the public transit system.

Currently, there are approximately 4,050 bus stops in the CITY. Of those bus stops, approximately 1,110 are designated transit advertising furniture locations equipped with Advertising Display Faces (*see Exhibit B – Transit Furniture Inventory*). These locations

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typically include shelters with kiosks, transparent protective covers and back lighting; and/or street benches with transparent protective covers on the seatbacks.

The number of bus stops and the number and types of transit street furniture units are subject to addition or elimination depending on the level of transit services and corresponding funding, changes to zoning ordinances, and other impacts to the transit system.

Contractor shall assume responsibility for the sale of space on all transit street furniture equipped with advertising display space. Contractor shall have the exclusive right to the advertising display spaces on CITY transit advertising furniture.

It is anticipated work under this contract may include, but not be limited to: production; installation and removal of advertisements; replacement of all transparent protective coverings on ad panels, as necessary; replacement of advertisement hangers and hardware, as necessary, to display advertisement correctly; replacement of ad kiosk light bulbs, as necessary; and cleaning of advertising transparent protective surfaces.

A detailed inventory of all existing transit advertising furniture owned by the CITY will be provided to Contractor. Contractor shall assume the existing advertising spaces on transit furniture in its present condition. During the term of the Contract, the CITY may provide additional advertising assets to Contractor for its use in performing its contractual services.

Generally, each transit advertising shelter shall have a maximum of two (2) advertising panels, which shall be located only on the shelter end panels or be standing alone as an advertising kiosk within six (6') feet of the shelter structure.

The current bus stop furniture design specifications in use today by the CITY are as follows: 13' canopy shelter with integral three-sided kiosk or two-sided panel that includes a bench and thirty (30) gallon or (40) gallon trash receptacle. The advertisement area shall have the ability to hold an advertisement poster 48" X 70" in size.

Advertising posters for advertisement style benches are typically 23.75" x 82" in size. The actual size may vary slightly. CITY reserves the right to change the bus stop furniture design at any time.

The CITY currently allows Shelter Wrap advertising displays installed on the back panel of up to 50 ad shelters. The dimensions of the shelter back panel space is 96" wide and 63.75" high. The Shelter Wrap material must be perforated to allow for air flow and visibility through the material. The current approved material is Cooley Mesh Max Lite 9 oz. The CITY, at its sole discretion, may consider increasing, decreasing, or changing any requirements of this program under this Contract with a 30-day notice to the Contractor.

Advertising area on new transit shelters is manufactured with back lighting feature for the display area to promote advertisement visibility, but lighting and/or lighting levels cannot be guaranteed due to malfunction, theft, vandalism or any other unforeseen circumstances. Existing advertisement shelters may or may not have back lighting features for the display area, lighting cannot be guaranteed.

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In addition, the CITY may replace future transit street furniture with a completely different design and available advertising space may differ.

5.4 BUS ADVERTISING PROGRAM

CITY buses are primarily for the transport of passengers using the public transit system. The CITY recognizes the advantage of the Bus Advertising Program in generating revenue but expects Contractor to maintain a professional advertising environment with minimal interference or disruption to the public transit system.

Buses are operated out of three (3) CITY transit operations and maintenance facilities. Facility, location and choice of buses is usually determined by ridership need, availability of resources, and location feasibility. Bus locations and routes are not guaranteed for a specific bus and may change at any time. The number of buses operating at any given time is subject to increase or decrease depending on the level transit service and corresponding funding or other impacts to the transit system. Contractor shall not provide a guarantee to advertising clients of particular buses for any facility, route, or location.

In the event of a TOC work stoppage or bus strike, the CITY cannot guarantee the availability of specific vehicles for use for advertising purposes and/or guarantee their specific route assignments. During such circumstances, vehicles with advertising may be reassigned to different routes and/or facilities at the sole discretion of the CITY.

Contractor shall assume responsibility for the sale of external and internal advertising space on all transit revenue vehicles with advertising display space. Contractor shall have the exclusive right only to the advertising display spaces on CITY owned transit revenue vehicles. Currently, there are approximately 497 buses with varying advertising display spaces (**see Exhibit C – Transit Operating Statistics and Fleet Inventory**), operated out of three (3) transit facilities:

South Transit Facility
2225 W Lower Buckeye Road
Phoenix, AZ 85009

North Transit Facility
2010 W Desert Cove Road
Phoenix, AZ 85029

West Transit Facility
405 N 79th Ave
Phoenix, AZ 85043

The CITY will provide a current fleet inventory and specific advertising display spaces available for each bus type.

Contractor shall reserve interior space on each vehicle for sole use by CITY on the bulkhead space behind the driver where applicable, plus ten (10) spaces to hold the equivalent of ten (10) 28-inch cards for fare and other passenger information. In addition, in compliance with ADA regulations, two (2) cards (Spanish and English) shall be placed to indicate that the front seats are reserved for senior passengers and passengers with disabilities. Also, two (2) cards (Spanish and English) shall be posted to indicate where wheelchair and other mobility aids have precedence. Currently these signs take up the equivalent of fourteen (14) spaces total,

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which is subject to change.

5.5 ADVERTISING STANDARDS, CONTENT, AND APPROVALS

5.5.1. Standards and Conduct

Transit street furniture and buses may be purchased, in part, with federal funds and the CITY is expected to be compliant with federal regulations. In turn, the CITY expects Contractor to ensure and maintain compliance with federal regulations as well as other state and local requirements.

Although not an employee of the CITY, Contractor, in performing under this Contract, is the face of the CITY with regards to the CITY’s Advertising Programs. For this reason, while performing under this Contract, Contractor and its officers, directors, employees, agents, and subcontractors shall present and conduct themselves in a manner that reflects credit upon the CITY and must do nothing that reflects negatively upon CITY, causes the CITY to be held in disrepute, or subjects the CITY to criticism.

5.5.2. Future Changes

Additional changes are expected as new components of the City of Phoenix Transportation 2050 Plan are implemented, including the addition of light rail extensions, which may increase or decrease service and/or bus furniture along certain routes, as well as the standard service changes that occur every April and October.

5.5.3. Advertising Content Responsibilities

It is the intent of the CITY that all transit advertising panels on CITY transit street furniture and buses are non-public forums and are to be set aside for advertising proposed commercial transactions and City-provided or transit-specific services and programs.

Contractor shall be responsible for the content of all advertising to be displayed in the transit advertising program and Contractor shall use the then-current Transit Advertising Standards as a basis for accepting advertising content for posting. Contractor shall have the right to reject any non-compliant advertising. Contractor shall hold the CITY harmless from all litigation regarding its sale of advertising and its determination of the acceptability of advertising content.

5.5.4. Content Approval

Contractor will make the initial determination as to whether a proposed advertisement is compliant with the Transit Advertising Standards (**see Exhibit A – Transit Advertising Standards**). All advertisements, including ad copy changes, shall meet Transit Advertising Standards, as those standards are changed from time to time, and shall be submitted to the CITY for review and approval by the CITY along with a written explanation as to the Contractor’s justification on the proposed commercial transaction; the CITY shall respond to the initial request within up to five (5) business days. The CITY anticipates responding in an expeditious manner; however, the CITY may also determine that further review by the CITY is necessary and may extend past the initial response time of five (5) business days. The CITY

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may require changes in copy, visuals, or other materials so that the advertisement is compliant with advertising standards. Any advertisements posted without prior CITY approval must be promptly removed at the direction of the CITY, at Contractor’s own expense. The CITY may assess liquidated damages in the amount of \$100 per occurrence per day. Occurrence shall mean per affected location per day.

The Advertising Review Process provides an appeal process to a client who may believe a rejected advertisement is compliant with the Transit Advertising Standards (*see Exhibit F – Advertising Review Process*).

5.5.5. Digital/Technology

The CITY may consider the implementation of digital displays or advanced technology, if proposed by Contractor. This Contract as written does not include pricing or provisions to incorporate digital/technology at transit advertising furniture locations. The CITY shall have the sole approval authority regarding any implementation of digital/technology on its assets.

5.5.6. Non-Standard Advertising Displays

Contractor may propose to CITY alternate shapes and sizes of advertisements. The CITY, at its sole discretion, may accept such requests and may require further documentation on the application of the design to the transit advertising furniture; or reject such requests without assigning any reasons. Contractor shall not, without prior written approval of CITY, undertake installation of non-standard advertising displays, which may include digital displays, animation, cut-outs/embellishments, and painted bulletins.

5.6 ADVERTISING INSTALLATION

5.6.1. General Installation Requirements

All advertising shall be displayed in a neat, clean, and professional manner. Contractor shall maintain all displayed advertising to ensure its neat appearance and promptly remove all advertising that is damaged or otherwise unsightly in appearance. Contractor shall ensure all advertisement materials are of quality appropriate to endure the physical environment of Phoenix. All advertisements shall be clean and in graffiti-free condition acceptable to the CITY.

CITY reserves the right to require Contractor to promptly remove, at Contractor’s own expense, any advertising which, in the opinion of CITY, is unsightly in appearance. All requests shall be completed by Contractor within one (1) business day of written or verbal notice by the CITY and at Contractor’s expense. In the event the advertising program is discontinued, Contractor shall either undertake at its sole expense or pay CITY for removal of the advertisements and restoration of all assets to original condition.

The CITY strictly prohibits any advertisements be installed utilizing metal blades, knives, or any other sharp tools with the sharp blade or edge directly in contact with the furniture or bus.

5.7 TRANSIT STREET FURNITURE AD INSTALLATION

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5.7.1. Scheduling

Contractor shall provide a weekly advertising installation and removal schedule. Contractor shall distribute installation schedule via email to key personnel provided by the CITY. Contractor shall provide approved schedule a minimum of three (3) business days prior to the installation of advertisements.

5.7.2. Vacant Advertising Display Spaces

Contractor shall at all times maintain current, approved advertising in all vacant advertising display spaces. If paid advertising is not available, Contractor shall be responsible for printing and installing self-promotional content instructing potential advertising clients on how to contact Contractor to purchase advertising space, or other advertising approved by CITY. Contractor may opt to pay for the production and posting of advertising for CITY programs in lieu of self-promotional advertising at no additional cost to the CITY. The CITY may also request that Contractor advertise City-provided or transit-specific services and programs on a space-available basis to fill vacant advertising display cases.

5.7.3. Transit Street Furniture Relocation Option

The CITY may consider the relocation of shelters based upon the recommendation of Contractor provided that the resulting location of shelters does not diminish the amenities provided to transit passengers. Any relocation of transit advertising furniture must comply with Americans with Disabilities Act (ADA) requirements and must fit within existing CITY right-of-way.

CITY shall retain the final approval on relocation of any existing transit advertising furniture. The actual relocation work shall be the responsibility of the CITY. However, if the relocations are performed at the request of Contractor, the costs of such relocations shall be charged back to Contractor.

Relocation of existing transit advertising furniture to new locations will adhere to the CITY requirements that advertising *is permitted* on arterial streets correlating to a bus route to include zoning districts: RO- Residential Office, CO- Commercial Office, GO- General Office Option, and P-1- Limited Parking District. Advertising *is permitted* in residentially zoned areas along a major arterial street adjacent to private homes with rear yard block fences facing the street. Otherwise, advertising is not permitted in residential areas.

During the term of the Contract, the CITY at its sole discretion, may remove, replace, modify or relocate shelters and transit street furniture as necessary to accommodate changes in service, address chronic vandalism, respond to safety and security needs, or for other reasons such as interference with construction, maintenance or repairs. The costs of such removals, replacements, and relocations shall be the responsibility of the CITY. The CITY cannot guarantee a set number of locations, specific transit advertising furniture configurations, or the availability of specific locations.

5.7.4. Transit Street Furniture Removal Option

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Contractor may request the CITY to remove existing transit advertising furniture from the advertising program if the asset is non-performing. Such removals shall be charged back to Contractor. CITY shall retain the final approval on removal of any existing transit advertising furniture from the advertising program. The CITY may, for its purposes, require transit street furniture remain at these locations without advertising.

5.7.5. New Location Request

Contractor may request the CITY to add advertising furniture to a bus stop location without existing advertising furniture and/or without furniture. The CITY will evaluate and determine at its sole discretion to have advertising furniture added, or to continue these locations without advertising and/or furniture. The cost of adding new locations shall be charged back to Contractor at Contractor’s sole expense.

5.8 BUS AD INSTALLATION

5.8.1. Bus Exterior

Contractor and/or its subcontractor shall assure that all final product exterior advertisements are manufactured, installed, and removed in accordance with current industry standards.

It is preferred that cuts to the advertising be made prior to placement on the bus whenever possible.

No ads shall be installed on any surface that has been painted until after a 90-day cure period. CITY or its TOC shall provide the notification of the 90-day period.

No ads shall be installed on any surface producing excess heat such as but not limited to the muffler access panel or louvers.

Contractor agrees that existing decals (i.e. transit system identification logos, bus numbers, Department of Transportation, Americans with Disabilities Act, warnings, safety, or graphics) on the bus shall remain visible, unless otherwise approved by the CITY.

5.8.2. Scheduling

Contractor shall provide a weekly advertising installation and removal schedule based on information provided in the bus down shift reports provided by the CITY or its TOC. Contractor shall distribute installation schedule via email to key personnel provided by the CITY. Schedule shall include all buses to be made available for installs and/or removals.

Contractor shall provide the installation schedule a minimum of three (3) business days prior to the installation of advertisements to ensure time for CITY and its TOC staff to inspect, clean, and dry the vehicles. Schedule shall include a contingency list of alternative buses in the event the original bus is not available due to service requirements, damage, or any other reason the CITY or its TOC staff deems the bus out of service. CITY shall coordinate with the TOC to

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have the buses readily available for advertising installation as long as it does not interfere with regular bus operations.

The CITY shall coordinate with the TOC to provide the specific location at the facility where Contractor may locate the buses scheduled for advertisement installation. The CITY shall make available space at each transit facility for bus advertisement installations, removals, and repairs.

5.8.3. Quality

Contractor and/or subcontractor shall cut seams in advertising at locations (e.g. rub rails, windows, etc.) to avoid creating air pockets where water can pool between advertisement and the bus body which can cause rust and paint damage.

Each advertisement shall be free from wrinkles, blisters, air pockets or similar defects; shall be cut around doors, windows, buttons and other exterior protruding components to the vehicle contour lines; advertising material shall be cut and applied tightly around the rub rail to prevent water from pooling and creating bus damage; and shall present a neat, clear and clean appearance.

5.8.4. Full Wraps/Tails

The majority of the current fleet does not allow for advertising to be placed on the rear exterior of the bus. Contractor shall not undertake Full Wrap or Tail bus advertising on buses without prior written approval from CITY.

5.8.5. Direct Application Advertising

Direct applications can be used for Full Sides, King (both standard king and super/King Kong) and Queen (both standard Queen and super/Queen Kong) ads on buses.

Contractor shall be responsible for all costs associated with the installation, maintenance and removal of direct application advertising. This includes, but is not limited to, damage caused to the buses as follows: damage/cuts to window seals, paint, air pockets collecting water and dirt which contribute to rust/paint damage and ads installed in high heat areas causing damage/burns to ad material and/or paint.

All material for the direct applications shall be of transit industry standard and quality and shall be a pressure sensitive vinyl. Production quality shall be controlled to ensure minimum effects of sun, weather, and frequent washing. Additionally, UV or conventional clear coat is required. UV inks are acceptable as an alternative to clear coating.

Final, posted advertisement shall be free of wrinkles, rips, tears, etc.

5.8.6. Photos/Inspections

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Contractor shall complete a pre-installation inspection and the inspection shall be documented with photos. Contractor shall take time/date stamped photos of the entire area of the bus surrounding the installation area prior to the advertisement being posted, and post-installation. Photos shall include time/date stamp; the bus number shall be clearly visible in the full-length view photo.

5.8.7. Bus Interior

All interior advertisements shall be secured on both ends with a retaining strap. The appropriate size strap shall be used for each model bus. Contractor shall ensure that the straps fit securely and snug in the bus advertisements. When installing the straps, care shall be taken to ensure that the copy on the car card is not covered. All car cards and advertisements posted shall be evenly spaced on each vehicle.

5.9 ADVERTISING MAINTENANCE

Contractor shall be solely responsible for all costs associated with maintaining advertising display space in satisfactory condition to meet advertising client and CITY expectations, as well as ensuring CITY assets are handled and maintained properly.

5.9.1. Transit Street Furniture Ad Maintenance

For those shelters with functioning lighting, Contractor shall provide replacement bulbs that are like-for-like at that shelter.

CITY shall be responsible for electric costs, electrical system repair, and general repair of advertising display faces; graffiti removal (except on transparent protective covering panel), cleaning, and trash removal of the surrounding area.

Where transparent protective coverings are installed on the back or third panel of a kiosk, Contractor shall maintain a CITY transit map poster provided by the Public Transit Department’s Public Information Officer.

Contractor shall maintain all advertising furniture transparent protective coverings in a clean, clear and damage-free condition. All transparent protective coverings with graffiti, either etched or drawn/painted, shall be removed by Contractor and the transparent protective coverings shall be cleaned to an “as new” condition or be replaced at no additional cost to the CITY within forty-eight (48) hours of notification or during the routine inspection schedule whichever occurs first.

5.9.2. Bus Ad Maintenance

Contractor shall continually monitor direct application advertisements replacing and/or removing as often as required to maintain a neat and clean appearance free from defects, wrinkles, air pockets, etc.

Contractor shall maintain all paid advertising interior bus car cards in a clean and attractive

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condition acceptable to CITY. The CITY’s TOC is responsible for installation, removal, and maintenance of all non-paid interior bus car cards.

5.10 ADVERTISING REMOVAL

5.10.1. General Requirements for Removal of Advertisements

Within forty-eight (48) hours of written or verbal notice by the CITY and at Contractor’s expense, CITY reserves the right to require Contractor to remove any advertisement which is unsightly in appearance or is in violation of CITY’s Transit Advertising Standards.

5.10.2. Removal of Expired Advertising.

Contractor shall remove expired advertisements as follows:

- Client contracts with twenty-four (24) or fewer expired ads must be removed within three (3) business days.
- Client contracts with twenty-five (25) to ninety-nine (99) expired ads must be removed within seven (7) business days.
- Client contracts with 100 or more expired ads must be removed within ten (10) business days.

Once Contractor is notified by the CITY to remove expired advertising, Contractor shall provide before and after photo documentation with time/date stamp of expired advertising removals. The photo shall document the entire shelter ad and the next ride sign shall be visible in photo for the CITY confirmation of transit shelter location.

If Contractor fails to remove expired advertising in the required time frames, the Contractor shall pay the CITY the amount equal to the CITY’s percent of the Net Sales Revenue determined by the rate specified in the client contract(s). If a contract does not exist, the CITY can, in its sole discretion, assess an amount determined by the CITY to be an average rate charged for similar advertising space based upon currently published rates provided by Contractor annually.

5.10.3. Bus Ad Removal

Contractor shall, at its own expense, as soon as possible and no longer than twenty-four (24) hours, remove all bus advertisement displays, which it may be directed to do by CITY, for the purposes of CITY or its agents altering, repairing, painting or retiring of assets. Regardless of the cause of the damage, contractor shall thereafter be responsible for the replacement of the advertisements displays removed.

5.10.4. Direct Applications

When a direct advertisement is removed, Contractor shall take necessary steps to restore the asset to its prior condition, (as documented in pre-application photos), ordinary wear and tear excluded.



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Each bus advertisement and any underlying material shall be completely removed prior to the installation of new advertisements and after the 13th consecutive advertising period (12 months), unless requested in writing in advance of advertisement expiration and approved by CITY. After advertisement has been posted for 12 consecutive months, Contractor shall have five (5) calendar days to remove all direct application advertisements and restore the bus to its original condition, excluding normal wear and tear. After complete removal of the expired advertisement and photographic documentation of the bus indicating no underlying damage, the same or a new advertisement may be reapplied to the bus using new direct application material(s).

In case Contractor fails in the removal of advertisements, the task shall be conducted by CITY at Contractor's sole expense. Contractor shall be charged for the cost of removal and/or restoration at the current standard hourly rate for CITY staff or its Contractor. The CITY or its Contractor shall submit an invoice for the removal and restoration to transit advertising Contractor. Said invoice shall be payable by Contractor within sixty (60) calendar days of its issuance.

Immediately following removal of advertising, Contractor shall provide photos of cleaned bus; no residue and full restoration of bus to original condition, excluding normal wear and tear.

Contractor shall dispose of all removed and scrap ad material in the proper refuse container provided by the CITY or TOC. Contractor shall check with TOC to determine location of approved refuse containers.

5.11. DAMAGES

Contractor shall not hold the CITY responsible for accidental damages to advertising display spaces or associated advertisements except in the case of negligence by CITY employees or other contractors to the CITY. However, CITY and its agents agree to use reasonable care in order to avoid damage to the advertisements.

5.11.1. Transit Street Furniture Damage

Contractor shall not cause damage to an advertising shelter, advertising bench, or their respective hardware (hinges/doors/panels/etc.), through over-torqueing, ratchetting, roughness, or other means. All such damage shall be repaired by the CITY and be charged back to Contractor at the City's then-currently contracted hourly labor rate if, in the sole opinion of the CITY, Contractor is the responsible party for the advertising furniture damage.

Contractor shall report all damage noted to any transit advertising furniture to the CITY, including all non-advertising transit street furniture.

5.11.2. Bus Damage.

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Contractor will be responsible for all costs to repair bus back to the original condition when in the sole opinion of the CITY, bus damage is caused due to the installation, maintenance, and removal of advertising.

Any bus damage discovered by Contractor shall be documented during the pre-inspection by Contractor. Contractor shall document any bus damage with time/date stamped photos of the entire side of bus ensuring the bus number is clearly captured. Contractor shall report all discovery and documentation of bus damage to the CITY within twenty-four (24) hours of discovery. The CITY, in its sole opinion, will determine the responsible party for the bus damage repair.

Once bus damage is documented by Contractor, Contractor shall reject the damaged bus from advertising installation until repairs are complete and CITY notifies Contractor the bus is once again available for advertisement installations. Contractor shall proceed to install an advertisement on an alternative bus listed on the installation schedule.

Any bus damage covered up by advertisements without prior written CITY approval and/or not reported to the CITY, constitutes automatic responsibility be placed on Contractor and Contractor shall be liable for all associated repair costs.

5.11.3. Damage to Copy and Bus Cards.

CITY shall not be responsible for accidental damage caused to advertising displays during operation or maintenance of buses. The CITY and its agents shall use reasonable care in order to avoid damage to the displays. It is Contractor’s duty to replace paid advertising interior car cards regardless of whether the car cards were negligently or intentionally damaged or otherwise subject to malicious mischief or acts of vandalism. Contractor’s obligation to replace said car cards is absolute and is not dependent upon any notification by CITY; however, Contractor agrees to replace any damaged or dirty car cards immediately upon receipt of written notice from CITY and in any event, within two (2) business days after receipt of such notice. Contractor shall remove car cards from buses within five (5) business days after they have expired.

5.12. SALE AND MANAGEMENT OF TRANSIT STREET FURNITURE AND BUS ADVERTISING

The sole source of revenue from this agreement shall be the sale of advertising space. Advertising shall be permitted within the advertising space/size available on the transit advertising asset.

Contractor, at its own expense, shall manage the advertising program of the CITY. Unless otherwise noted, the CITY shall not be responsible for any operating expenses of Contractor, including sales and/or marketing campaigns and production costs. Internal commission payments and allowances for bad debt shall be borne solely by Contractor.

5.12.1. CITY Use of Display Spaces

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CITY shall have the right to utilize all unsold transit advertising space at its sole discretion. CITY use of CITY owned display spaces shall be coordinated with Contractor with a prior ten (10) calendar day notice. All such space shall be subject to pre-emption for paying advertisers. If requested by the CITY, Contractor will install and remove CITY provided advertising on a space-available basis to fill vacant advertising display spaces at no additional cost to the CITY.

5.12.2. Sales Commissions to Outside Advertising Agencies

This Contract shall allow up to 15 percent (15%) sales commission payable by Contractor to outside advertising agencies. The actual amount of sales commission paid to such agencies may be deducted from the Contractor’s Gross Sales Revenues to calculate Net Sales Revenue. In no case shall any internal sales commissions (paid to Contractor staff OR a person or corporation in which the Contractor has a financial interest) be deducted from Gross Sales Revenues, Net Sales Revenue, OR the CITY’s share of Net Sales Revenue.

5.12.3. Contractor Operating Costs

The CITY will require the Contractor to pay for all Contractor’s operating costs from Contractor’s share of the Net Sales Revenue generated from the sale of advertising. Contractor, at its own expense from its designated share of Net Sales Revenue, shall manage the advertising program of the CITY. Contractor’s cost of sales (including sales and marketing campaigns, production costs, and outside agency sales commissions above 15%), and operations shall be borne solely from the Contractor’s share of Net Sales Revenue. Any internal commission payments and allowances for bad debt shall be borne solely from Contractor’s share of Net Sales Revenue. Unless otherwise noted, the CITY will not be responsible for any operating expenses of Contractor.

5.12.4. National Sales Experience

Contractor shall provide, throughout the term of the Contract, a qualified and experienced national sales organization with a minimum of five years’ experience and sufficient business relationships to solicit sales and to sell national, regional, and local advertising on transit street furniture and buses.

5.12.5. Local Presence

Contractor shall have a fully staffed local office presence within the Phoenix metro area under the direction of a local sales/operations manager.

5.12.6. Business and Sales Plan

Contractor shall make its best effort to gain maximum price for use of CITY’s advertising display spaces. Contractor shall create a Business and Sales Plan on how the transit advertising program shall be marketed and present it to the CITY within thirty (30) calendar days of the implementation of this Contract. Contractor shall update the Plan annually and as requested by the CITY. Contractor shall provide updated copies to the CITY within thirty (30) calendar days of the beginning of each contract year.

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5.12.7. Published Advertising Rates

Contractor shall establish and publish advertising rates and present the rates to the CITY within fifteen (15) calendar days of the implementation of this Contract. Contractor shall update and publish the rates annually and as requested by the CITY. Contractor shall provide updated rates to the CITY within thirty (30) calendar days of the beginning of each contract year.

5.12.8. Client Contracts

Contractor shall submit all client contracts and the final approved ad copy to the CITY, along with a written explanation as to the Contractor’s justification on the proposed commercial transaction, a minimum of five (5) business days before initial installation of such advertisements. Contractor shall submit all client contract changes a minimum of five (5) business days prior to the effective date of the change. Contractor shall submit all contract renewals and approved ad copy to the CITY, along with a written explanation as to the Contractor’s justification on the proposed commercial transaction, a minimum of five (5) business days prior to the expiration date of the previous contract.

In all client contracts, including single client contract issued and billed for multiple markets and/or jurisdictions, Contractor shall provide a supplement contract or worksheet deemed acceptable by the CITY which provides all client charges included in the calculation of Gross Sales (including but not limited to City/State/Local taxes, Production costs, Printing costs, internal Commissions, outside agency sales commissions above 15%, etc.) separated from the amount of revenue to be included in the calculation of Net Sales Revenue due to the CITY.

Contractor shall not enter into any contracts with clients that extend more than twelve (12) months beyond the current expiration date of the Contract. Any client contracts that extend beyond the expiration date for this Contract shall be structured for the client to provide monthly payments for advertising services rendered to the Successor Contractor.

Contractor’s client contracts shall not contain any provision prohibiting or in any way restricting the assignment of such contracts to the CITY, or its designee, at the end of the term of this Contract or termination of this Contract.

Client contracts shall include the following, at a minimum:

- Name of the advertiser (client), clearly stated;
- Outside advertising agency (if applicable);
- Individual contract number;
- Term of contract;
- Advertisement posting start date and posting end date;
- Number of units to be posted within CITY area covered by this contract; Type of unit to be posted (bus shelters, shelter wraps, bus benches, interior car cards, and/or bus ad);
- Gross Sales Revenue and Net Sales Revenue
- Identify specific bonuses, overrides, or overpostings including the number and location of each posting (if applicable);

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- Identify whether contract is new or renewal of previous contract, and if renewal, reference previous contract number
- Signature of client and/or third party purchasing agency indicating approval
- Signature of Contractor staff indicating approval

For Transit Street Furniture Advertising, add:

- Location of each advertising unit to be posted within the CITY area covered by this Contract.

If the number of units sold is excessive and exceeds the available space on the Contract, Contractor shall furnish a full list of locations to the CITY in a separate attachment. If the posted locations change from the original list, Contractor shall provide an updated list monthly to be submitted with the monthly revenue reports.

For Bus Advertising, add:

- Advertisement size (Super/King Kong, Super/Queen Kong, Standard Queen, Standard King, Full Sides,, etc.).

Within three (3) days of execution, Contractor shall provide the CITY with copies of each client contract and associated change order. If a change is made and the CITY is not provided a change order, the amount listed on the original contract, or the corrected amount, whichever is greater, will be used to calculate the amount due to the CITY.

If Contractor believes that such provided documents are confidential, Contractor shall mark the documents “CONFIDENTIAL”. Contractor shall state the basis for considering the documents confidential, including the specific harm or prejudice that may result from disclosure. If a public records request for the documents is received, the CITY will promptly notify Contractor that a request or requirement to produce the documents has been received. Notice will be given as soon as practicable, and may include facsimile transmission, electronic mail and/or regular mail. Contractor may then take such measures as it deems necessary, at Contractor’s sole cost and expense, to protect the documents against disclosure. If Contractor fails to obtain and provide to the CITY a court order prohibiting disclosure of the requested documents within seven (7) days after receiving notice of the request for disclosure, the CITY will deem the document provider to have consented to the disclosure, and the requested documents or information may be disclosed by the CITY.

5.12.9. Client Contracts with Gaps in Posting Dates

When Contractor sells advertising with gaps in the posting dates, Contractor shall remove said advertisement during the non-contracted time period. If advertisement is not removed according to the posting dates as specified, Contractor shall provide CITY its percentage of the revenue for amount of time the advertising was posted during non-contracted time at the rate specified in the client contract.

5.12.10. Barter and Trade Agreements

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Contractor shall not trade or barter advertising display space on CITY transit assets. Contractor shall not have the right to accept payment from clients for use of CITY advertising space in the form of goods, services, or other non-cash reimbursements.

5.12.11. Bonuses, Overrides, or Overpostings

Bonuses, overrides, or overpostings may be offered by Contractor only when the client has a contract and made payment for advertising display space on CITY buses or transit furniture. In such cases, Contractor shall only post additional displays up to a maximum total of five percent (5%) of the number of faces sold to client in Phoenix, unless otherwise approved by CITY. Bonuses, overrides, and/or overpostings shall be documented as part of the client contract and awarded displays shall be removed when there is an opportunity to gain revenue through sale of the awarded advertising display space. The number, value and locations of all bonuses (including those within the local market, but outside of Phoenix) shall be clearly documented on the client contract and provided to CITY.

5.12.12. Addition or Reduction of Advertising Display Spaces

Should the CITY at any time during the term of this Contract, increase or decrease, or cause to be increased or decreased, the number of advertising display spaces over a period of three (3) consecutive months by ten percent (10%) or more from the base total in the initial contract year, then the minimum annual guarantee payment shall be recalculated and adjusted proportionate to the percentage change in the advertising display space. Review of the increases/decreases and a true-up of any due/owed revenue will occur on a quarterly basis. Future increases/decreases of ten percent (10%) or more beyond the initial adjustment, shall be calculated from the most recent adjusted total.

5.12.13. Performance Problems and Liquidated Damages

Contractor shall timely perform all of its obligations as set forth herein. CITY shall be sole decision-maker on all questions relating to the quality and acceptability of any work performed under this Contract. If, in the sole opinion of the CITY, performance becomes unsatisfactory, CITY shall notify Contractor in writing. Contractor shall correct such deficient performance within three (3) business days of the date such notice is received. If the nature of such deficient performance is such that it cannot be corrected within three (3) business days, then at the sole discretion of the CITY, a longer period may be allowed within which to correct the deficiency. Provided, however, if additional time is required to correct performance, work shall commence within the aforementioned three (3) business day period and shall be diligently pursued until completion. In the event the unsatisfactory performance is not corrected within the time specified above, CITY shall have the right, at its sole discretion, to complete the work to its satisfaction and deduct the cost of correction from any balances due or to become due to Contractor or invoice Contractor for the cost of correction. Alternatively, at the CITY's sole discretion, should Contractor fail to timely respond and take corrective action as above provided, the CITY shall assess liquidated damages for the Contractor's failure to perform or failure to perform in a timely manner in the amount of \$100 per occurrence per day.

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If the CITY finds CITY is not receiving its portion of the Net Sales Revenue for advertising sales, Contractor shall pay the CITY an amount equal to the CITY’s percent of the Net Sales Revenue determined by the rate specified in the client contract(s). If a contract does not exist, the CITY can, in its sole discretion, assess an amount determined by the CITY to be an average rate charged for similar advertising space based upon currently published rates provided by Contractor annually.

5.13. PAYMENT TO THE CITY

In consideration of the exclusive rights and privileges granted to Contractor herein while the Contract is in effect, Contractor shall pay to the CITY the percentage share of Net Sales Revenue derived from the sale of the advertising space granted under this Contract OR shall pay to the CITY a minimum annual guarantee, whichever is greater.

5.13.1. City Share of Net Sales Revenue

The CITY percentage share of Net Sales Revenue shall be the percentage proposed by Contractor in its Price Proposal. CITY’s share of Net Sales Revenue shall be based upon the sale of advertising during the reporting period, not receipt of revenue collected in the reporting period.

5.13.2. Client Billing Collections

Contractor shall diligently pursue collection of advertising billings if a client is in default. However, in no instance shall Contractor withhold advertising revenues due to the CITY as a result of a delinquent advertiser.

5.13.3. Minimum Annual Guarantee (MAG)

The Minimum Annual Guarantee (MAG) shall be \$1,900,000 for the transit furniture advertising component of this contract and \$1,400,000 for the bus advertising component of this contract. The MAG, or separate MAGs, shall be adjusted annually at the beginning of each contract year (after the initial contract year). The MAG, or separate MAGs, for the new contract year shall be recalculated to equal 75 percent (75%) of the preceding year’s Net Sales Revenue. However, the MAG shall never be adjusted below the MAG used in the first year of the Contract.

5.13.4. Monthly Revenue Payments

Minimum monthly revenue payments shall be made on a monthly basis to the CITY in an amount equal to one-twelfth (1/12th) of the current minimum annual guarantee (MAG), subject to quarterly reconciliation as provided below. Monthly revenue payments for a month are due by the 15th day of the month. Monthly revenue payments are due by the 15th day of the month beginning with the first month of the contract (1st payment due on the 15th day of the month following contract execution). These monthly revenue payments shall continue during the course of the Contract. Monthly revenue payments shall be accompanied by any required monthly reports.

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Contractor shall submit monthly revenue payments to:

City of Phoenix/Public Transit Department
P.O. Box 29115
Phoenix, AZ 85038-9115

5.13.5. Late Payments

In the event a revenue payment is received after the 15th day of the month in which the payment is due, a late charge of five percent (5%) of that revenue payment shall be paid by Contractor.

5.13.6. Quarterly Reconciliation of Revenue Statement

Within fifteen (15) days of the end of each three (3) month quarter, commencing on the contract start date, Contractor shall provide to the CITY a quarterly revenue statement for the previous contract quarter. The statement shall be accompanied by a revenue payment to the CITY for the difference BETWEEN the portion of the MAG paid for the previous contract quarter AND the CITY’s percentage share of Net Sales Revenue for the previous contract quarter, IF the CITY’s percentage of Net Sales Revenue is higher than the MAG.

Contractor shall submit quarterly true-up payments to:

City of Phoenix/Public Transit Department
Attn: MSD, Management Assistant II
302 North First Avenue, Suite 900
Phoenix, AZ 85003

5.14. INSPECTIONS AND MONITORING

Contractor shall provide adequate supervision and training to assure performance of the work as specified in this Contract. All inspections, contract monitoring and oversight for work subcontracted to a third party shall be conducted by Contractor staff.

Contractor shall assign field contract monitors who shall make routine monthly transit advertising inspections and provide a written report to the CITY within five (5) business days of the inspections. The written report shall contain inspection date, location, bus or shelter number, advertiser name and contract number, photos of inspections, and notations of any damage (regardless of cause) and any corrective actions taken.

For Transit Furniture: The field contract monitor shall monitor all areas of responsibility as listed in the contract including but not limited to expired copy, damaged copy, plexiglass condition, lighting, and general maintenance. The field monitor shall select a number of locations per month to ensure a review of all locations/furniture at least once annually (currently about 91 per month). City may also request inspections of specific sites to be inspected based upon reported issues or complaints.

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For Bus: The field contract monitor shall monitor all areas of responsibility as listed in the contract including but not limited to expired copy, damaged copy, and bus/body condition where ads are being installed/removed. The field monitor shall schedule a review of bus advertisements at each of the three operating locations per month. In addition, the field monitor shall select to review a number of installations and removals per month to ensure a balanced review of the different advertisers, fleet and operating locations. City may also request inspections of specific ads/buses to be inspected based upon reported issues or complaints. The contractor shall inspect a minimum of 25% of the contracts in place each month.

CITY staff shall conduct contract monitoring on an ongoing basis. CITY staff shall review billing and revenue reports, client contracts and ad copy, and conduct monthly inspections of advertising. CITY shall advise Contractor of any corrective action needed either by email or at the quarterly Contractor Meeting.

5.15. MONTHLY REPORTS

With each monthly revenue payment submission, Contractor shall submit a report detailing the following:

5.15.1. Advertising Program Status

Contractor shall submit a monthly activity and revenue report for all current ads with revenue in the reporting period, and a cumulative report tracking “Contract to Date” revenue, both in Excel format. At a minimum, the report shall include the following: client name, contract number, billing period start and end dates, gross contract amount, gross billed amount (to date), and remaining contract balance. The report shall indicate the total amount due to the CITY for the month.

5.15.2. Transit Advertising Status

Contractor shall submit a monthly report detailing condition of current transit advertising assets, including relocations/ removals, and damage/accident reports (as applicable).

5.15.3. Bus Advertising Report.

Contractor shall submit a monthly report tracking the ads placed and/or removed on the outside or inside of buses including the bus number, date installed or removed, contract number, name of ad, and any other information deemed pertinent by the CITY.

5.16. SEMI-ANNUAL REPORTS

5.16.1. Semi-Annual Revenue by Location Report

Contractor shall submit a semi-annual report detailing the revenues by location to indicate the best and least performing ad spaces.

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5.17. ANNUAL REPORTS

5.17.1. Annual Audited Statement of Gross and Net Sales Revenue

Within sixty (60) days of the close of each contract year and of the close of the contract term, Contractor shall provide the CITY with an audited statement of gross and net sales revenue for the contract year specific to the sales for CITY. The report shall be certified and signed by the top two (2) financial principals of the organization, such as the Chief Financial Officer (CFO) and Internal Auditor. If the statement is prepared by an independent Certified Public Accountant (CPA), only one (1) signature will be required. In the event the reconciliation indicates an adjustment in the payments due to the CITY is required, any such adjustment (and payments) shall be made within ten (10) days of the submittal of the report. If any funds are due by the CITY to Contractor, that amount shall be deducted from the next payment due to the CITY.

5.18. RECORDS

5.18.1. Contract Files

Contractor shall keep true and accurate records of all transactions pertaining to this Contract and associated client contracts. All client contracts for advertising space shall be filed and stored by Contractor for the duration of the Contract and shall be maintained for an additional year after the expiration date for the Contract.

5.18.2. Financial Records, Audit Requirements, and Records Requests

Contractor shall maintain thorough financial records of its activity in accordance with generally accepted accounting practices.

The CITY reserves the right to audit Contractor’s records once each year of the Contract term or at CITY’s convenience. Upon no less than five (5) business days’ notice from CITY, such records shall be open to audit by CITY or its authorized representative during normal business hours at the local, regional, and main offices of Contractor. Contractor shall make available all sales records and posting information required to perform such an audit. The CITY reserves the right to execute physical inspections or audits of Contractor’s ad and revenue postings to verify space sold with Contractor’s sales records at any time during the term of this Contract.

CITY may perform, or cause to be performed, periodic, unscheduled, and unannounced informal physical and financial audits of all transit advertising activity under this Contract. Physical audits may include visible audits of advertising displays posted on CITY’S transit advertising furniture. The physical audit may constitute a detailed review of Contractor’s sales and collections for the purpose of determining applicable sales; what discounts were offered and received by advertisers; and that the number of advertising faces allocated to particular advertisers was the actual amount sold. CITY may also choose to perform, or cause to be performed, a more detailed review of Contractor’s pertinent financial records. Audits shall reconcile Contractor’s sales and shall serve as an assessment of Contractor’s performance in compliance with the terms and conditions of this Contract.

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In addition to the provisions stated above, and with reasonably good cause, CITY may, upon two (2) weeks written notice, request that the records pertaining to this Contract be sent to the CITY for audit at no cost to the CITY. Upon receipt of such request, Contractor shall send all such records to the address specified in the request.

5.19. END OF CONTRACT CLOSEOUT

5.19.1. Contract Closeout

Contractor shall work with the CITY to ensure a seamless transition between this Contract and any successor contract for the same or similar services.

Effective at termination of this contract, client contracts created and managed by Contractor shall be treated as client contracts created by Successor Contractor for the purpose of calculating revenue to the CITY using terms of this Contract and shall continue until either the contract expiration, or three (3) months from the date of the final termination of Contractor’s services, whichever shall first occur. Contractor shall provide CITY with copies of client contracts and all other relevant documentation that impose on-going obligations on the part of the CITY or Successor Contractor at termination of this Contract.

All keys, identification badges, and other devices in the possession of Contractor and its associates and subcontractors used to access transit advertising displays and all materials installed on transit advertising displays shall become property of the CITY at no cost to the CITY.

Contractor shall provide the CITY with a physical inventory of all current advertising displays with written and accurate information noting the client name, advertisement title, and associated advertisement location. The information shall be provided in a clear and easily used format at least one (1) month prior to termination of this Contract.

Once a Successor Contractor has been selected to perform the full range of services provided hereunder, Contractor shall assign all of its outstanding client contracts to the Successor Contractor effective at the termination of this contract, and the Successor Contractor shall be liable to Contractor only for payment of fifteen percent (15%) of Net Sales Revenue on all such outstanding Contractor client contracts. Such amounts shall be payable only when payment in full is received from the client(s) on its contract(s) and shall continue until either the contract expiration, or three (3) months from the date of the final termination of Contractor’s services, whichever shall first occur. CITY shall review Successor Contractor’s accounting of the payment to the Contractor.

5.19.2. Transition to Successor Contractor.

Contractor shall be entitled to receive a share of Net Sales Revenue on all Contractor-established client contracts until their expiration, or three (3) months from end date of the Contract, whichever is sooner.

The Net Sales Revenue Share shall be apportioned as such:

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- CITY shall retain its percentage as offered in the Contract by the Contractor.
- The Contractor’s share of the Net Sales Revenue shall be 15%, paid to Contractor by Successor Contractor.

If Contractor and Successor Contractor are same company or individual, a closeout of this Contract shall be conducted, but the remittance of 15% of Net Sales Revenue to the Contractor shall not be in effect. All other agreement closeout terms and conditions shall be in effect.

Where the Successor Contractor is an individual, firm or entity other than Contractor, Contractor shall cooperate fully with the Successor Contractor in order to effect a smooth and seamless transition. Such cooperation shall include, but is not limited to, the following:

- Share and permit the copying of all books and records necessary or convenient for the Successor Contractor to undertake its work. Such records shall include, but are not limited to, maintenance records, inventory records, supplier contracts, and support agreements;
- If original records are necessary for the Successor Contractor to properly perform its legal obligations, originals shall be provided to the Successor Contractor and Contractor shall keep copies thereof;
- Execute such documents as may be necessary to effect a transfer of all necessary contracts, goods, services and utilities;
- Not sell, transfer, convey or encumber any assets of CITY or any of the assets to be transferred to the Successor Contractor;
- Maintain the inventory levels necessary for the Successor Contractor to continue to perform the work;
- As CITY may direct, surrender to the Successor Contractor, or to CITY, all City owned real, personal and/or intellectual property;
- Inventory all property (real, personal or mixed) purchased or leased with CITY funds and all property in which CITY has an ownership or possessory interest. Include a description of the property and its location in sufficient detail to permit its easy identification.

Until the date that the Successor Contractor assumes its position, Contractor shall fully and conscientiously perform its obligations hereunder in a professional manner.

Should the CITY elect to perform the same or similar work using CITY forces, Contractor’s duty of cooperation, as described above, shall extend to CITY as the Successor Contractor.

5.20. CONTRACT TERMINATION

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This Contract may be terminated at any time by mutual written consent, or by the CITY, with or without cause, upon giving thirty (30) days written notice to Contractor.

With specific regard to the transit advertising program, the CITY may terminate the Contract with no further opportunity for Contractor to cure, if Contractor has committed repeat violations. "Repeat violations" shall mean: (i) within any of the contract years there occurs five (5) or more violations of this Contract by Contractor and the CITY has provided Contractor with the required written notice pursuant to this Contract, whether or not such violations are cured; and, (ii) each such violation does not arise from causes beyond the reasonable control of Contractor, its subsidiaries or subcontractors, or without their fault or negligence.

CITY may terminate this Contract for cause upon thirty (30) days prior written notice if Contractor has committed a material breach of this Contract and has failed to cure such breach within ten (10) workdays of receipt of written notice from the CITY. If the breach is such that it cannot be remedied within ten (10) work days, in the sole discretion of the CITY, then Contractor shall commence the cure within the ten (10) day period and shall use its best efforts to complete the cure within a reasonable time, at the discretion of the CITY.

If requested by the CITY, Contractor shall continue to perform the services herein until such time as CITY secures the services of a new contractor to perform the full range of services provided hereunder. Alternatively, the CITY may, at its option and sole cost and expense, engage the services of a new contractor to manage Contractor's existing contracts and CITY's obligations under such contracts until a full-service provider has been selected. During this interim period, the monthly revenue payments shall continue to be apportioned as though Contractor were continuing to perform the full range of its duties and Contractor shall continue to make its monthly payments on the minimum annual guarantee.



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
PUBLIC TRANSIT DEPARTMENT**

**302 N. 1st Avenue, Suite 900
Phoenix, AZ 85003**


6.1. TECHNICAL AND PRICE PROPOSAL

The Technical Proposal and Price Proposal must be submitted as follows:

6.1.1. Submitted in a sealed envelope/package with the following contents -

- Technical Proposal: One original and one electronic copy (*searchable* PDF format on one flash drive)
- Price Proposal and Financial Information: One original and one electronic copy (*searchable* PDF format on one flash drive). The Price Proposal and Financial Information package must be submitted in a separate sealed envelope within the offer package.

The submitted flash drives must contain electronic file copies of all offer text, spreadsheets, and diagrams included in the original printed offer.

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6.2. PRICE PROPOSAL

The City may award Transit Street Furniture Advertising and Bus Advertising separately or combined, as indicated in Sections A, B and C.

Contractor agrees to manage the CITY’s transit street furniture and/or bus advertising program, as awarded, for the term of the Contract, and to make revenue payments to the CITY of the percentage share of Net Sales Revenue derived from the sale of the advertising space granted under this Agreement OR the minimum annual guarantee (adjusted annually), whichever is greater. The percentage share of Net Sales Revenue proposed by Contractor shall be firm and fixed for the term of the Contract.

As the Gross Sales Revenue is defined as the total amount charged for advertising services by the Advertising Contractor to Advertisers/Clients for use of Advertising Display Spaces, and the Net Sales Revenue is defined as Gross Sales Revenue minus outside agency sales commissions (up to a maximum of 15%), offerors are cautioned the calculation of the Net Sales Revenue is subject to the provisions contained within this Contract.

A. Transit Street Furniture Advertising Program


Net Sales Revenue Percentage _____%

B. Bus Advertising Program

Net Sales Revenue Percentage _____%

C. Combined Transit Street Furniture and Bus Advertising Program

Net Sales Revenue Percentage _____%

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For purposes of evaluating the Price Proposal, the following calculation shall be used to compute the estimated annual revenues to the City:

Transit Street Furniture Advertising Program

\$3,200,000 net sales revenue x *transit furniture* advertising net sales revenue percentage proposal = estimated annual transit furniture advertising revenue to the City.

Bus Advertising Program

\$2,500,000 net sales revenue x *bus* advertising net sales revenue percentage proposal = estimated annual bus advertising revenue to the City.

Combined Street Furniture and Bus Advertising Programs

\$5,700,000 net sales revenue x combined *transit furniture and bus* advertising net sales revenue percentage proposal = estimated combined annual transit furniture and bus advertising revenue to the City.

The City will evaluate the Price Proposal based on the overall greatest advertising revenues to the City. Below are three examples depicting how the Price Proposal(s) will be evaluated.

Example 1:

Bidder	Transit Furniture % Bid	Bus % Bid	Combined % Bid
Company A	65%	55%	60%
Company B	55%	60%	57%
Company C	70%	50%	61%

Company A Transit Furniture: \$3,200,000 x 65% = \$2,080,000
 Company A Bus: \$2,500,000 x 55% = \$1,375,000
 Company A Combined: \$5,700,000 x 60% = \$3,420,000

Company B Transit Furniture: \$3,200,000 x 55% = \$1,760,000
 Company B Bus: \$2,500,000 x 60% = **\$1,500,000***
 Company B Combined: \$5,700,000 x 57% = \$3,249,000

Company C Transit Furniture: \$3,200,000 x 70% = **\$2,240,000***
 Company C Bus: \$2,500,000 x 50% = \$1,250,000
 Company C Combined: \$5,700,000 x 61% = **\$3,477,000****

*Total for greatest separate Transit Furniture and Bus: **\$2,240,000 + \$1,500,000 = \$3,740,000**

Greatest combined Transit Furniture and Bus: **\$3,477,000



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Example 2:

Bidder	Transit Furniture % Bid	Bus % Bid	Combined % Bid
Company A	68%	59%	67%
Company B	55%	60%	57%
Company C	70%	50%	61%

Company A Transit Furniture: \$3,200,000 x 68% = \$2,176,000

Company A Bus: \$2,500,000 x 59% = \$1,475,000

Company A Combined: \$5,700,000 x 67% = **\$3,819,000****

Company B Transit Furniture: \$3,200,000 x 55% = \$1,760,000

Company B Bus: \$2,500,000 x 60% = **\$1,500,000***

Company B Combined: \$5,700,000 x 57% = \$3,249,000

Company C Transit Furniture: \$3,200,000 x 70% = **\$2,240,000***

Company C Bus: \$2,500,000 x 50% = \$1,250,000

Company C Combined: \$5,700,000 x 61% = \$3,477,000

*Total for greatest separate Transit Furniture and Bus: **\$2,240,000 + \$1,500,000 = \$3,740,000**

Greatest combined Transit Furniture and Bus: **\$3,819,000

Example 3:

Bidder	Transit Furniture % Bid	Bus % Bid	Combined % Bid
Company A	68%	NA	NA
Company B	60%	65%	63%
Company C	65%	60%	64%

Company A Transit Furniture: \$3,200,000 x 68% = **\$2,176,000***

Company A Bus: NA

Company A Combined: NA

Company B Transit Furniture: \$3,200,000 x 60% = \$1,920,000

Company B Bus: \$2,500,000 x 65% = **\$1,625,000***

Company B Combined: \$5,700,000 x 63% = \$3,591,000

Company C Transit Furniture: \$3,200,000 x 65% = \$2,080,000

Company C Bus: \$2,500,000 x 60% = \$1,500,000

Company C Combined: \$5,700,000 x 64% = **\$3,648,000****

*Total for greatest separate Transit Furniture and Bus: **\$2,176,000 + \$1,625,000 = \$3,801,000**

Greatest combined Transit Furniture and Bus: **\$3,648,000



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6.3. YEARS IN BUSINESS CERTIFICATION

Contractor certifies that they have been in operation for a period of ____ years.

Contractor certifies that they have provided transit-specific advertising services for a period of ____ years.



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6.4. ADDENDA CERTIFICATION

The undersigned acknowledges receipt of the following addenda to RCS PTD21-002:

Addendum Number _____, dated _____

Addendum Number _____, dated _____

Addendum Number _____, dated _____

Addendum Number _____, dated _____

Addendum Number _____, dated _____

Addendum Number _____, dated _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered not responsive to the RCS. Include the acknowledged receipt of each addendum with the technical proposal.

Authorized Official: _____

Title of Authorized Official: _____

Company Name: _____



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6.5. REFERENCE CHECK FORM

The City will contact each client identified in the Technical Proposal to conduct a reference check. Provide the name of the client, contact person, current telephone number and email address, and dates of service for each client.

NO CITY OF PHOENIX EMPLOYEES MAY BE USED AS REFERENCES

Client Name _____

Contact Person _____

Telephone Number _____

Email Address _____

Dates of Service _____

Client Name _____

Contact Person _____

Telephone Number _____

Email Address _____

Dates of Service _____

Client Name _____

Contact Person _____

Telephone Number _____

Email Address _____

Dates of Service _____

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6.6. CONTRACT DISCLOSURE FORM

<p>This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.</p>			
<p>1. Name of person submitting this disclosure form.</p>			
<p> </p>			
First	MI	Last	Suffix
<p>2. Contract Information</p>			
<p>Solicitation # or Name:</p>			
<p>3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)</p>			
<p> </p>			
<p>4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.</p>			
<p> </p>			
<p>5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.</p>			
<p><input type="checkbox"/> Subcontractors may be retained, but not as of the time of this submission</p> <p><input type="checkbox"/> List of subcontracts, including the name of the owner(s) and business name:</p>			
<p> </p>			
<p>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.</p>			
<p> </p>			



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7. Disclosure of conflict of interest:

A. City Code Section 43-34

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

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

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

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

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City 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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8. Acknowledgements

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

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

B. Fraud Prevention and Reporting Policy

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

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

OATH

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

PRINT NAME

TITLE

SIGNATURE

DATE

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



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6.7. OFFER

TO THE CITY OF PHOENIX:

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

Arizona Sales Tax No. _____
Use Tax No. for Out-of State Suppliers _____
City of Phoenix Sales Tax No. _____
Arizona Corporation Commission File No. _____

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

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

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

Authorized Signature

Date

(LLC, Inc., Sole Proprietor)

Printed Name and Title
(Member, Manager, President)

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



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6.8. ACCEPTANCE OF OFFER

The Offer is hereby accepted.

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

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

CITY OF PHOENIX
A Municipal Corporation
Ed Zuercher, City Manager

Jesús E. Sapien or delegate, Public Transit Department

ATTEST:

_____ this ____ day of _____, 2021
City Clerk

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