



CITY OF PHOENIX

**PUBLIC WORKS DEPARTMENT
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**INVITATION FOR BID
IFB 23-FMD-016 (KP)**

**HVAC MAINTENANCE, REPAIR, AND REPLACEMENT SERVICES -
REQUIREMENTS CONTRACT**



TABLE OF CONTENTS

CITY OF PHOENIX

TABLE OF CONTENTS

SOLICITATION RESPONSE CHECK LIST3

SECTION I – INSTRUCTIONS4

SECTION II – STANDARD TERMS AND CONDITIONS 15

SECTION III – SPECIAL TERMS & CONDITIONS29

SECTION IV – INSURANCE AND INDEMNIFICATION 43

SECTION V – SCOPE.....51

SECTION VI – SUBMITTALS62

SECTION VII - EXHIBITS.....74



SECTION I - INSTRUCTIONS

CITY OF PHOENIX

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

SOLICITATION RESPONSE CHECK LIST

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

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- The mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.

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



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

1. DESCRIPTION – STATEMENT OF NEED - TERM:

- 1.1. The City of Phoenix invites sealed offers for **HVAC Maintenance, Repair, and Replacement Services** for a one-year period, with four one-year options to extend for a total term of up to five years, commencing on or about November 1, 2022.
- 1.2. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.
- 1.3. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION:

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

3. SCHEDULE OF EVENTS:

ACTIVITY (All times are local Phoenix time)	DATE	LOCATION
Solicitation Issue Date	Monday, May 2, 2022	
Pre-Offer Conference	Tuesday, May 10, 2022 at 1:00 pm	<p>The public will be able to join the WebEx by the meeting link or phone number noted below and listen to the Pre-Offer meeting live:</p> <p>Join by meeting link https://phxpublicworks.webex.com/phxpublicworks/j.php?MTID=md2477bbfcba82e0faff54dbe0f88bc8a [phxpublicworks.webex.com]</p> <p>Join by phone +1-415-655-0001 US Toll Free Access Code: 2483 863 1266</p>
Written Inquiries Due Date	Friday, May 13, 2022 at 1:00 pm	kristina.pylant@phoenix.gov



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

Offer Due Date	Wednesday, May 25, 2022 at 11:00 am	<p>See SECTION I – INSTRUCTIONS, Item 12, SUBMISSION OF OFFER</p> <p>The public will be able to call the WebEx phone number noted below and listen to the Bid Opening meeting live:</p> <p>Join by phone +1-415-655-0001 US Toll Access Code: 146 126 2717</p>
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The City reserves the right to change dates and/or locations as necessary, and the City does not always hold a Pre-Offer Conference or Site visit.

4. PREPARATION OF OFFER:

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



providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

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

5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix **Public Works Department, Procurement Services Division, 200 W. Washington St., 7th Floor**, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

6. EXCEPTIONS:

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

7. INQUIRIES:

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

Schedule of Events. The City will not consider questions received after the deadline.

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

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

8. ADDENDA:

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

9. BUSINESS IN ARIZONA:

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

10. LICENSES:

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

11. CERTIFICATION:

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

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

12. SUBMISSION OF OFFER:

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.



The City of Phoenix Public Works Department is accepting electronic Offers for this solicitation, in addition to other methods of submitting sealed Offer packages (hardcopy). Offerors are responsible for submitting the Offer (electronic or hardcopy) before the due date and time of the solicitation deadline.

The Offeror is responsible for managing potential delays due to delays caused by the Carrier or technical difficulties.

12.1 For Electronic Submittal: Please submit your response via email to pwd.solicitations@phoenix.gov. The date and time on the email will provide proof of submission and verification if the Offer was received on or prior to the due date and time specified. **Please identify the solicitation number and title in the subject line of the email when submitting the Offer.**

The City email file size is limited to 150mb. To send larger files electronically, the upload and receipt time may take longer than expected. It is the responsibility of the Offeror to ensure that the Offer met the due date and time.

Please DO NOT submit links to Google Docs, Dropbox Paper, or similar services. Your offer may be deemed non-responsive if your offer is supplied utilizing these services.

12.2 For In-Person and Carrier Delivery: Offers will be received at City of Phoenix City Hall located at 200 W. Washington St, 1st floor, Atrium, Phoenix, AZ 85003. The Atrium is just beyond the security checkpoint. The drop-off box is a grey bin marked Public Works Department. Delivery must be made during normal business hours (8:00 am – 5:00 pm, local Phoenix time, Monday – Friday) before the solicitation due date and time. Offers must be clearly marked on the outside of the package as designated in the solicitation.

12.2.1 Delivery of Offers: If the Offeror submits the Offer in a hardcopy format, then the Offer must be submitted in a sealed package/envelope marked with the following information:

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

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



13. WITHDRAWAL OF OFFER:

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

14. OFFER RESULTS:

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

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has reviewed the offers, the City will post an award recommendation on the website. By signing and submitting its offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

15. PRE-AWARD QUALIFICATIONS:

15.1 Offeror must have been in operation a minimum of **12** years. The Offeror's normal business activity during the past **12** years will have been for providing the goods or services in this solicitation. (This information must be provided in The Submittal section, Years in Business and Customer Reference Listing of this solicitation.)

15.2 Equipment. Offeror will own or have assured access to (through hire, lease, purchase agreement, availability of manufacturing equipment, or other means) the following key items or equipment in full working order, and must demonstrate that, based on known commitment, they will be available for use in the proposed contract.

16. AWARD OF CONTRACT:

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.

16.2 Factors that may be considered by the City include:



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

- 16.3 Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
- 16.4 Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
- 16.5 Safety record, including complaints or investigations; and,
- 16.6 Offeror history of complaints, and termination for convenience or cause, litigation or lawsuits.
- 16.7 Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- 16.8 A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Deputy Finance Director or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:

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

18. SOLICITATION TRANSPARENCY POLICY:

- 18.1.** Commencing on the date and time a solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation
- 18.2.** As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

- 18.3. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- 18.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- 18.5. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 18.6. “To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

19. PROTEST PROCESS:

- 19.1. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 19.2. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX

- 19.3.** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4.** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.
- 19.5.** All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
- 19.5.1. Identification of the solicitation number;
 - 19.5.2. The name, address and telephone number of the protester;
 - 19.5.3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
 - 19.5.4. The form of relief requested; and
 - 19.5.5. The signature of the protester or its authorized representative.
- 19.6.** The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City’s Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

20. PUBLIC RECORD:

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request



to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

21. LATE OFFERS:

Late Offers 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.

22. RIGHT TO DISQUALIFY:

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

23. SITE INSPECTION:

Offeror agrees that submission of a offer indicates that the Offeror either 1. made a site inspection and is aware of all conditions that may affect performance and offer prices; or 2. Did not make a site inspection, but regardless is either aware of all conditions that may affect performance and offer prices, or accepts the risk and understands the scope of its binding Offer.

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.

25. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

25.1. Offers will be reviewed for documentation of any required qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

25.2. Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine



responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

25.3. Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

26. EQUAL LOW OFFER:

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.



SECTION II – STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

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

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

May: Indicates something that is not mandatory but permissible.

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

“A.R.S.” Arizona Revised Statute

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

"City" The City of Phoenix

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

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

“Days” Means calendar days unless otherwise specified.

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



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

2. CONTRACT INTERPRETATION:

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

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

2.2.1. Federal terms and conditions, if any



- 2.2.2. Special terms and conditions
- 2.2.3. Standard terms and conditions
- 2.2.4. Amendments
- 2.2.5. Statement or scope of work
- 2.2.6. Specifications
- 2.2.7. Attachments
- 2.2.8. Exhibits
- 2.2.9. Instructions to Contractors
- 2.2.10. Other documents referenced or included in the Solicitation

- 2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- 2.4. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- 2.5. NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- 2.6. PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or



acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION:

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

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

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

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



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

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.

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

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

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

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

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

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

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

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.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the



right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor’s facilities (during normal business hours).

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

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

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

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

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

4. COSTS AND PAYMENTS:

- 4.1. GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute



exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.

- 4.2. PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- 4.3. LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- 4.4. DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 4.5. NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- 4.6. FUND APPROPRIATION CONTINGENCY:** The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- 4.7. MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.



4.8. F.O.B. POINT: All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

5. CONTRACT CHANGES:

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

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

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

6. RISK OF LOSS AND LIABILITY:

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

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

6.3. FORCE MAJEURE: Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is



beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

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

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

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

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

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



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

7. CITY'S CONTRACTUAL RIGHTS:

- 7.1.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.
- 7.2. NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 7.3. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- 7.4. ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 7.5. DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- 7.6. COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.



- 7.7. COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- 7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City’s request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.
- 8. CONTRACT TERMINATION:**
- 8.1. GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- 8.2. CONDITIONS AND CAUSES FOR TERMINATION:**
- 8.2.1** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
- 8.2.2** The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX

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

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

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 and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in a offer price.



10. TAX INDEMNIFICATION:

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will 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.

11. TAX RESPONSIBILITY QUALIFICATION:

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

12. NO ISRAEL BOYCOTT:

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.



SECTION III – SPECIAL TERMS & CONDITIONS

1. **FREE ON BOARD (FOB):** Prices quoted shall be FOB destination and delivered, as required, to the following point(s): various City locations.
2. **PRICE:** All prices submitted shall be firm and fixed for the initial one year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 30 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

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

3. **METHOD OF ORDERING:** Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.
4. **METHOD OF INVOICING:** Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:
 - City purchase order number or shopping cart number
 - Items listed individually by the written description and part number.
 - Unit price, extended and totaled.
 - Quantity ordered, back ordered, and shipped.
 - Applicable tax
 - Invoice number and date.
 - Delivery address.
 - Payment terms.
 - FOB terms.
 - Remit to address
 - Work order number
5. **METHOD OF PAYMENT:** Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.



6. **PARTIAL PAYMENTS:** Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.
7. **SUPPLIER PROFILE CHANGES:** It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.
8. **ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY):** Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.
9. **AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director or Department Director prior to the institution of the change.
10. **SUSPENSIONS OF WORK:** The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.
11. **HOURS OF WORK:** All work under this contract shall be coordinated with the City's project manager. Any changes to the established schedule must have prior written approval by the City's project manager.
12. **POST AWARD CONFERENCE:** A post-award conference will be held by the Procurement Officer or project 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.



SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

- 13. PERFORMANCE INTERFERENCE:** Contractor shall notify the City’s department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

Department	Name	Phone Number
Public Works	Monica Treesh	(602)262-6820
Aviation	Rusty Farnsworth	(602) 850-1589
Phoenix Convention Center	Don Hankins	(602) 256-5613

- 14. COOPERATIVE AGREEMENT:** In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

A current listing of eligible entities may be found at www.mesaaz.gov/business/purchasing/save Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.

- 15. ADVERTISING:** Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director or Department Director, and the City will not unreasonably withhold permission.
- 16. 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.
- 17. 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.
- 18. 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.



19. **DELIVERY/SERVICE TICKET:** Contractor shall provide a packing list or service ticket for items delivered to the City or services provided to the City. Tickets should include the following and a legible copy shall be provided to the City:
- Date
 - City purchase order number
 - Written description of services which were provided
 - Itemized list of materials which were delivered, including quantity
 - A unique identification number and Contractor name
 - Signature of City employee who accepted for the materials/services

20. **MISCELLANEOUS FEES:** Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided in the bid price schedule.

Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from “check-in” to “check-out” at the worksite.

21. **WARRANTY:** All equipment supplied under this contract shall be fully guaranteed by the contractor for a minimum period of one year from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the contractor (including parts and labor) without cost to the City.
22. **INDUSTRY STANDARDS:** It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.
23. **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.
24. **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.

24.1 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.

24.2 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.

24.3 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.

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

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

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



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

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

24.7 Employee Identification and Access: Contract Workers are forbidden access to designated restricted areas. Access to each building will be as



directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

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

Unless otherwise provided for in the scope of work:

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

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

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

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

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



SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

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

25. BACKGROUND SCREENING – MAXIMUM RISK:

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

25.2. 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:
 - City data centers, money rooms, high-value 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.

25.3. 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.

25.4. 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,



SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

- 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 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.

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

- Conviction of a felony.
- Conviction of a misdemeanor (not including traffic or parking violation).
- Any outstanding warrants (including traffic and parking violations).



SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

- A person currently on parole or probation.
- A person currently involved in an investigation.

- 26. 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, the Contractor shall not disclose data generated in the performance of the service to any third person.

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

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

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.



ITEMS 28 AND 29 BELOW ARE FOR AVIATION ONLY:

**28. AVIATIONS SECURITY PROCEDURES
CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND
SCREENING:**

Contract Worker Background Screening

Contractor agrees that all contract workers and subcontractors (Contract Workers) that Contractor furnishes to the City pursuant to this Contract shall be subject to background and security checks and screening (Background Screening). Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Contract or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Contract.

28.1. Background Screening Requirements and Criteria

Contractor agrees that it will verify legal Arizona worker status as required by Arizona Revised Statutes (A.R.S.) § 41-4401. Contractor further agrees that it will conduct a background check for real identity and legal name on all Contract Workers prior to proposing the Contract Worker to the City.

28.2. Additional City Rights Regarding Security Inquiries

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

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



28.3. Contractor Certification

By executing this Contract, Contractor certifies and warrants that Contractor has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate and current. A Contract Worker rejected for work under this Contract shall not be proposed to perform work under any other City contract or engagement without the City's prior written approval.

28.4. Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts

Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Contract, including supervision and oversight services.

28.5. Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to the City's entry into this Contract and any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in this Contract, Contractor shall defend, indemnify, and hold harmless the City for any and all Claims (as defined in Section II, 6.3) arising out of this Background Screening section including the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

28.6. Continuing Duty; Audit

Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Contract. Contractor shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this.

29. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS

A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK ON AIRPORT PROPERTY WITHOUT THE CONTRACT WORKER'S RECEIPT OF A CITY-ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE AREAS OF THE AIRPORT TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS AIRPORT PROPERTY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.



29.1. Badges

Upon notification from Contractor's authorized agent, the Contract Worker will proceed to the Badging Office for processing and issuance of a badge. The City will not process the badge until the Contract Worker satisfies the Background Screening requirements. The Contract Worker shall comply with all requirements and furnish all information requested by the Badging Office. All fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22. Current badging procedures and fees are available for review at <https://www.skyharbor.com/security/BadgingInformation>.

29.2. Key Access Procedures

If a Contract Worker's services require keyed access to enter a City facility, a separate key issue and return form must be completed and submitted to the City project manager by Contractor for each key issued.

29.3. Stolen or Lost Badges or Keys

Contractor shall immediately report lost or stolen badges or keys to the City. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

29.4. Return of Badges or Keys

All badges and keys are the property of the City and must be returned to the City at the Badging Office within one (1) business day after the Contract Worker's access to a City facility is no longer required to furnish the services under this Contract. Contractor shall collect a Contract Worker's badge and all keys (1) upon the termination of the Contract Worker's employment, (2) when the Contract Worker's services are no longer required at a City facility (3), and upon termination, cancellation, or expiration of this Contract.

29.5. Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach

Contractor's default under this Section shall include the following:

- 29.5.1. A Contract Worker gains access to a City facility without the proper badge or key;
- 29.5.2. A Contract Worker uses another person's badge or key to gain access to a City facility;
- 29.5.3. A Contract Worker commences services under this Contract without the proper badge, key, or Background Screening;
- 29.5.4. A Contract Worker or Contractor submits false, incomplete, or misleading information or negligently submits incorrect information



SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

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 Contract. Contractor acknowledges and agrees that the access control, badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor shall be liable for and shall pay to the City the sum of \$1,000.00 for each breach by Contractor of this Section. The parties agree that the foregoing amount is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Contract in the event that Contractor breaches this Section. Further, the parties agree to the foregoing amount because of the difficulty of proving the City's actual damages in the event Contractor breaches this Section. The parties further agree that three (3) breaches of this Section by Contractor within a three-month period of time or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Contract by Contractor and the City expressly reserves all of its rights, remedies, and interests under this Contract at law and in equity, including termination of this Contract.



SECTION IV – INSURANCE AND INDEMNIFICATION

1. DEFENSE AND INDEMNIFICATION CLAUSE:

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.

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.

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.

2.1.1. Commercial General Liability – Occurrence Form

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.
- 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.

2.1.2. 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-



SECTION IV – INSURANCE AND INDEMNIFICATION

CITY OF PHOENIX

contributory with respect to any insurance or self-insurance carried by the City.

2.1.3. Worker’s Compensation and Employers’ Liability

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

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

2.2. 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 Works Department, Kristina Pylant, 200 W. Washington St., 7th Floor, Phoenix, AZ 85003, kristina.pylant@phoenix.gov).**

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

2.4. 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 Works Department, Kristina Pylant, 200 W. Washington St., 7th Floor, Phoenix, AZ 85003)**. 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.**

- 2.5. 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.
- 2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.



THE FOLLOWING INSURANCE AND INDEMNIFICATION REQUIREMENTS ARE FOR AVIATION ONLY: GROUPS V – VII ONLY

1. DEFENSE AND INDEMNIFICATION CLAUSE:

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.

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 subconsultants. 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 determined necessary.



2.1. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that the (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

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

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Each Occurrence	\$5,000,000

- 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.
- The policy must not contain any exclusions for operations on or near airport premises.
- There shall be no endorsement or modification which limits the scope of coverage or policy limits available to the City of Phoenix as an additional insured.
- 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.

2.1.2. **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)	\$5,000,000
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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.



- The policy must not contain any exclusions for operations on or near airport premises.
- 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.

2.1.3. Worker’s Compensation and Employers’ Liability

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

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

2.2. 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 Works Department, Kristina Pylant, 200 W. Washington St., 7th Floor, Phoenix, AZ 85003).**

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

2.4. 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 Works Department, Kristina Pylant, 200 W. Washington St., 7th Floor, Phoenix, AZ 85003)**. 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.**

- 2.5. 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.
- 2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.



SECTION V – SCOPE

INTRODUCTION

The City of Phoenix invites qualified and licensed contractors to submit bids for Heating, Ventilation, Air Conditioning and Refrigeration (HVACR) Maintenance and Repair Services, in accordance with the provisions and specifications contained herein.

1. SCOPE OF WORK

Contractor will provide all labor, materials, equipment, supplies, and transportation necessary to perform preventative maintenance (PM), equipment repairs, startup services, and replacement parts for City of Phoenix HVACR units.

2. HVACR MAINTENANCE AND REPAIR SERVICES GROUPS – PUBLIC WORKS AND CONVENTION CENTER

Contractors may bid on any of the following groups that they are qualified for.

2.1 GROUP I - COMMERCIAL

Plant Equipment and Maintenance

2.1.1 Variable Air Volume (VAV)

2.1.2 Fan coil units

2.1.3 Chilled water coils

2.1.4 Chilled water systems

- Piping
- Pumps
- Valves

2.1.5 Air handlers

2.1.6 Cooling towers

Light Commercial (5-20 tons)

2.1.7 Exhaust fans

- Up to 10,000 CFM
- Over 10,000 CFM

2.1.8 Water Source Heat Pumps

2.1.9 Split systems

2.1.10 Mini-split systems

2.1.11 Package heat pumps

2.1.12 Package gas electric

2.1.13 Split system heat pumps

2.1.14 Computer Room Air Conditioners (CRAC) units

Industrial (20 tons and above)

2.1.15 Water source heat pumps

2.1.16 Split systems

2.1.17 Package heat pumps



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- 2.1.18 Package gas electric
- 2.1.19 Split system heat pumps
- 2.1.20 Evaporative coolers over 6,500 CFM

2.2 GROUP II - RESIDENTIAL

- 2.2.1 Split systems
- 2.2.2 Mini-split systems
- 2.2.3 Package heat pumps
- 2.2.4 Package gas electric
- 2.2.5 Split system heat pumps
- 2.2.6 Evaporative coolers up to 6,500 CFM

2.3 GROUP III – DUCT DESIGN, INSTALLATION AND FABRICATION

2.4 GROUP IV – LOW TEMPERATURE COOLERS/FREEZERS

- 2.4.1 Walk-in cooler
- 2.4.2 Walk-in freezers
- 2.4.3 Ice machines

3. HVAC MAINTENANCE AND REPAIR SERVICES GROUPS – AVIATION ONLY

Contractors may bid on any of the following groups that they are qualified for.

3.1 GROUP V - COMMERCIAL (AVIATION)

Plant Equipment and Maintenance

- 3.1.1 Variable Air Volume (VAV)
- 3.1.2 Fan coil units
- 3.1.3 Chilled water coils
- 3.1.4 Chilled water systems
 - Piping
 - Pumps
 - Valves
- 3.1.5 Air handlers
- 3.1.6 Cooling towers

Light Commercial (5-20 tons)

- 3.1.7 Exhaust fans
 - Up to 10,000 CFM
 - Over 10,000 CFM
- 3.1.8 Water Source Heat Pumps
- 3.1.9 Split systems
- 3.1.10 Mini-split systems
- 3.1.11 Package heat pumps
- 3.1.12 Package gas electric



3.1.13 Split system heat pumps

Industrial (20 tons and above)

3.1.14 Water source heat pumps

3.1.15 Split systems

3.1.16 Mini-split systems

3.1.17 Package heat pumps

3.1.18 Package gas electric

3.1.19 Split system heat pumps

3.1.20 Evaporative coolers over 6,500 CFM

3.2 GROUP VI – RESIDENTIAL (AVIATION)

Up to 5 tons

3.2.1 Split systems

3.2.2 Mini-split systems

3.2.3 Package heat pumps

3.2.4 Package gas electric

3.2.5 Split system heat pumps

3.2.6 Evaporative coolers up to 6,500 CFM

3.3 GROUP VII – DUCT DESIGN, INSTALLATION, AND FABRICATION (AVIATION)

4. MINIMUM EXPERIENCE / QUALIFICATIONS

4.1 Contractor must have been in business for twelve (12) consecutive years prior to bid.

4.2 Technicians must have six (6) consecutive years HVACR experience.

4.3 Contractor must employ a minimum of eight (8) HVACR service technicians to be able to provide services to the City and respond to emergency calls 24/7 (twenty hours a day, seven days a week).

4.4 Contractor Technicians shall have attended and provide certification of completion from a training program that meets or exceeds the standards established and validated by any one of the following HVACR industry associations:

4.4.1 Air Conditioning and Refrigeration Institute (ARI)

4.4.2 Air Conditioning Contractors of America (ACCA)

4.4.3 American Society of Heating, Refrigeration, Air Conditioning Engineers (ASHRAE)

4.4.4 Council of Air-Conditioning and Refrigeration Educators (CARE)

4.4.5 Heating, Air Conditioning & Refrigeration Distributors International (HARDI)

4.4.6 Plumbing, Heating, Cooling Contractors (PHCC)



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

4.4.7 Electric League of Arizona/Arizona Heat Pump Council Continuing Education

4.4.8 North American Technician Excellence (NATE) optional

4.5 Contractor must provide proof of current Universal EPA Certification for all service technicians at time of bid.

5. GOVERNING LAWS

The Contractor will be responsible for complying with the most current Phoenix Building Safety Codes, the City of Phoenix Fire Code, NFPA 70E, ASHRAE 90.1, and all other governing codes, permits, rules, laws, regulations and statutes pertaining to the work being performed.

6. CDCR

The CDCR is the City employee for each department using the resulting contract who has been specifically designated to act as the contact person to the Contractor and is responsible for monitoring and overseeing the Contractor's performance under this contract.

The CDCR will coordinate all work and will be the sole judge concerning acceptability and quality of work. Should it appear that there is real or apparent discrepancy between different sections of specifications concerning nature, quality or extent of work to be furnished, it will be assumed that Contractor will adhere to the more stringent requirement. Final decision will rest with the CDCR. The CDCR will be consulted on any concerns and issues arising during the performance of work under this contract and their decision will be final and binding.

7. SITE LOCATIONS

7.1 Public Works Department

7.1.1 Services may take place in Phoenix Metropolitan area or neighboring cities. Equipment types, manufacturers, and age vary throughout the City. Equipment tonnages range from large capacity water cooled chillers, to less than one ton through-the-wall air conditioning units.

7.1.2 Brand criteria include but is not limited to: Aeon, Amana, AZ-Tec, Energy Saver, Goodman, Bryant/Carrier, Trane/American Standard, Mastercool, Lennox, McLean, Ruud/Rheem, United Metal Products, Spec-Air, Sun Mfg., Tradewinds, York, Premier, Aero Cool.

7.1.3 Service will be required at Camp Colley in Happy Jack, Arizona.

7.1.4 Low Temperature Coolers and Freezers are located at the Phoenix Crime Lab and Police Property building. Preventative Maintenance (PM) shall take place every six (6) months. The checklist for the Low Temperature Cooler/Freezer PM must include, at a minimum, the following:

- list box temperature
- list set point



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- check temperature log for any temp changes
- inspect evap coil for ice build up
- inspect drain lines and heater
- check defrost operation
- inspect suction line insulation
- check fan motors and blades
- inspect condenser coil - clean as needed
- inspect electrical connections
- visually inspect for signs of leaks
- Note overall operation/condition

7.2 Aviation Department

7.2.1 Three airports (Phoenix Sky Harbor International Airport, Deer Valley Airport and Goodyear Airport) and their adjacent facilities, and one car Rental Car Center (RCC).

7.3 Convention Center

7.3.1 Phoenix Convention Center and venues.

8. INSPECTION AND MAINTENANCE

Contractor will follow manufacturer-recommended inspection and PM procedures. The appropriate checklist (see Exhibit A and B) must be filled out by Contractor and given to the CDCR upon completion of inspection/maintenance. The checklist will include all items inspected, parts serviced and/or replaced, quantity of refrigerant recharge, and note the general condition of the unit. The Preventative Maintenance Checklist is subject to changes at the discretion of the CDCR.

All work must include the EPA required documentation of refrigerant use/handling. All contracted employees handling refrigerant will possess current EPA refrigerant certification and shall provide proof of same if requested by the CDCR.

9. LOW TEMPERATURE COOLER/FREEZER PM CHECKLIST

- List box temperature.
- List set point.
- Check temperature log for any temp changes.
- Inspect evaporative coil for ice buildup.
- Inspect drain lines and heater.
- Check defrost operation.
- Inspect suction line insulation.
- Check fan motors and blades.
- Inspect condenser coil and clean as needed.
- Inspect electrical connections.
- Visually inspect for signs of leaks.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- Note overall operation/condition.

10. EQUIPMENT REPLACEMENT

Contractor will be responsible for removing and disposing of old HVACR equipment and materials as required. New HVACR units must be a nationally recognized brand name or a specific brand as requested by the respective CDCR.

HVAC and thermostat replacements will meet the following applicable criteria:

- 10.1 Efficiencies of new equipment will meet City of Phoenix building design standards whenever possible. Use of equipment which does not meet this standard requires prior approval of the CDCR.
- 10.2 All equipment replacements will conform to current City of Phoenix building codes, the Phoenix Building Safety Code, City of Phoenix Fire Code, National Electrical Code, NFPA 70E, and ASHRAE 90.1.
- 10.3 Contractor will provide incidental electrical work as required to install HVACR replacements.
- 10.4 Any roof penetration adjustments identified by the Contractor need prior approval by the CDCR prior to repairs.
- 10.5 If permits are required, the Contractor will obtain the permit and may submit the permit fee receipt for reimbursement as part of the service invoice. The permit reimbursement will be at cost, no markup allowed.
- 10.6 All administrative costs must be absorbed by the Contractor.
- 10.7 **The Contractor's service truck will carry sufficient supply of repair parts and equipment to perform routine HVACR service and repairs.**

11. EQUIPMENT/ PARTS DELIVERY

Contractor will contact CDCR to schedule date/time for the delivery of ordered equipment and/or parts for job site.

11.1 Deliveries for the Public Works Department:

- Public Works Warehouse 602-534-9520, 2631 S. 22nd Avenue, Phoenix AZ
- Delivery hours are 7:00 a.m. through 2:30 p.m., local Arizona time, Monday through Friday, excluding City holidays

11.2 Deliveries for Phoenix Convention Center:

- Phoenix Convention Center Warehouse, 150 N. 5th Street (lower-level North building), Phoenix, AZ 85004.

11.3 Deliveries for Aviation Department:

- Delivery Address: 2515 E. Buckeye Road, Phoenix, AZ 85034
- Delivery hours are 6:00 a.m. through 5 p.m., local Phoenix time, Monday through Friday, excluding City holidays.

12. EQUIPMENT LOCATIONS

There is no typical equipment installation scenario. Equipment may be located on a flat roof, pitched roof, ground/pad mounted, wall-mounted, or other location.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

Replacement of an existing unit will not typically require additional structural reinforcement or additional electrical and/or water hookups.

Contractor must:

- Include labor and materials for sealing, perforation, re-sealing roof, disconnecting and adding non-mercury thermostats as required
- Cap-off gas if required
- Tie-down unit securely for safety
- Provide crane or other rental equipment if required
- Include removal and disposal of old HVAC equipment and materials
- Label new equipment by riveted metal tag to identify existing breaker and thermostat

13. NEW EQUIPMENT WARRANTIES

Contractor must list on the invoice/service ticket the brand name and part/model number of all new HVACR equipment. A minimum one-year written warranty will apply to all materials and labor from the date of final acceptance of the project by CDCR. Any manufacturer's warranties that are more than one (1) year will be extended to the City.

14. REPAIR WARRANTIES

Contractor must list on the invoice/service ticket the brand name and part/model number of all replacement parts used. All repairs will be warrantied for a minimum period of ninety (90) calendar days from the date of repair. If the same item must be repaired again for any failure during the warranty period, the follow-up service will be performed at no charge to the City. Any replacement parts that fail during the warranty period will be replaced at no charge to the City including all labor. Parts that carry a standard warranty that exceeds ninety (90) days will be honored by the Contractor. All manufacturers' warranties that are more than one (1) year will be extended to the City.

15. LABOR RATES

Labor rate will start upon arrival at job site and end upon completion of work that day at job site with a one-hour minimum. Additional labor will be charged in 30-minute increments. The Contractor will not charge portal to portal rates, travel charges, fuel charges, mileage, or additional charges for service calls. All jobs are expected to require one qualified journeyman service person. CDCR must approve multiple service people before the work is started.

16. WORK HOURS

16.1 Regular: Work hours are 7:00 a.m. until 5:00 p.m., Monday through Friday; excluding City observed holidays; regular hourly labor rate will apply. Actual work hours may vary and will be dependent upon time of entry permitted by



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

the private property owner (or representative) as coordinated by the Contractor.

- 16.2 Premium:** Work hours other than regular hours defined above will be considered premium hours. Use of premium work hours must have the prior approval of the CDCR.

17. ON-SITE RESPONSE TIMES

17.1 For Public Works and Phoenix Convention Center:

17.1.1 Contractor will be on-site within four (4) hours of notification from CDCR, with the exception of emergency requests. Contractor will coordinate all repair/ installation schedules with the CDCR before beginning work.

17.1.2 Emergency on-site response will be two (2) hours of notification. Contractor will coordinate all repair service work with the CDCR.

17.1.3 Contractor will be required to provide twenty-four (24) hour toll-free access to their staff via email, mobile phone call or text message.

17.2 For Aviation Department:

17.2.1 Contractor will be on-site within four (4) hours of notification from CDCR, with the exception of emergency requests. Contractor will coordinate all repair / installation schedules with the CDCR before beginning work.

17.2.2 Phone response to emergencies will be thirty (30) minutes by phone and on-site within two (2) hours of notification. Contractor will coordinate all repair service work with the CDCR.

17.2.3 Contractor will be required to provide twenty-four (24) hour toll-free access to their staff via email, mobile phone call or text message.

18. CONTRACTOR REQUIREMENTS

18.1 All service work performed by Contractor will be to a professional standard, performed in a neat and professional manner, meeting all required state and municipal building codes, and susceptible to CDCR's inspection and approval. All materials used must be approved in writing by the CDCR.

18.2 Contractor will notify CDCR in writing of any unforeseen repairs, equipment and/or parts needed at job site. Additional work, parts and equipment needs must be approved by CDCR prior to performing services.

18.3 Contractor must provide CDCR a report for all work performed on installations, repairs, and PM is completed by written report within forty-eight (48) hours of completion of work.

18.4 Contractor will perform work in a way to minimize disruption to the normal operation of building tenants. Upon completion of work, the Contractor is



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

responsible for cleaning and removing from the job site all debris, materials, and equipment associated with the work performed.

- 18.5** Contractor will make necessary repairs in such a manner that does not damage City property. In the event damage occurs to City of Phoenix property or any adjacent property due to any repairs or installations performed under this Contract, the Contractor will replace or repair the same at no cost to the City.
- 18.6** Contractor will ensure all trash generated by work performed will be removed from the site. Additionally, the Contractor will ensure all disturbances to the area where the Contractor performed work are restored to the same condition prior to start of the job. Such disturbances may include but are not limited to excess material and construction debris. If an inspection reveals that the Contractor fails to clean up after work has been performed, the City will notify the Contractor of the discrepancy and the Contractor will have twelve (12) hours to make the needed correction.
- 18.7** In the event the work performance of the Contractor is unsatisfactory, Contractor will be notified by the City and be given one (1) business day to begin corrective action. Contractor will communicate with CDCR daily until the work has been completed to CDCR satisfaction. Labor and/or materials for all re-work will be at no cost to the City.
- 18.8** Contractor shall notify Requestor when work is concluded for the day and/or when the project is concluded in its entirety.
- 18.9** Contractor must comply with all OSHA standards and provide a copy of their written safety program if requested by CDCR.
- 19. EQUIPMENT RENTAL**
Contractor will be responsible for providing all equipment and vehicles typical to the trade necessary to complete the project at no additional cost to the City. Contractor may be required to service unique building structures that may require utilizing specialty equipment. Contractor will identify all special equipment necessary (that will result in additional charges) during the site visit so that it may be included in the Contractor's quote. Upon approval from the CDCR, the charges and fees agreed upon will be reimbursed at cost to the Contractor. No markup will be allowed. Original invoice(s) of supplier's materials and special equipment must be provided at the time of billing. The City will not accept any invoice that has been altered in any manner.
- 20. WORK ORDER REQUESTS**



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

The CDCR will notify Contractor of the work order and purchase order or shopping cart number by calling Contractor's service request number or email. If requested by CDCR, the Contractor shall perform a site visit with the CDCR for a pre-job inspection.

21. PRE-JOB INSPECTION

Special projects will require a minimum of one (1) site visit at no cost to the City of Phoenix. The Contractor will assess the equipment, make recommendations, and develop an estimate. The estimate shall be prepared at no cost to the City. A separate meeting will be held after the award and before any work starts under this contract.

22. QUOTES

All Contractors awarded a contract through this solicitation will have an opportunity to quote on project work. Within seven (7) calendar days after the site visit, the Contractor will provide a quote that shall include the following:

- 22.1 Name and address of facility or work site.
- 22.2 Full name of City staff requesting work.
- 22.3 Work Order number.
- 22.4 Detailed abbreviated scope of work.
- 22.5 Realistic timeframe for start and end dates.
- 22.6 Description of the existing system(s).
- 22.7 Description and part number(s) for replacement parts, duct work, electrical upgrades, thermostat, ancillary items and cost pursuant to the Bid Submittal.
- 22.8 Materials shall be listed as cost, markup/discount, and extended price [Example for 10% markup: \$100 + \$10 (10%) = \$110] pursuant to the Bid Submittal. Quotes for materials shall be included for consideration with the quote. Final receipts are required with the invoice for reimbursement.
- 22.9 The materials cost will include everything Contractor anticipates will be necessary to complete the job such as rental equipment, materials, subcontractor costs, permits, permitted drawings, subcontracted work, etc.
- 22.10 Additional charges, fees, or costs not mentioned or specifically allowed in this contract are not allowed and will not be paid.
- 22.11 If the final cost is less than the quoted cost, only the final cost will be billed to the City.
- 22.12 Cost overruns will be absorbed by the Contractor unless pre-approved in writing by CDCR before any work begins that is beyond the original scope of work and purchase order amount.
- 22.13 Exceptions to item "1" above are changes requested by the City in writing that incur higher project cost and longer delays. The decision on this will be made by the CDCR.
- 22.14 If changes need to be made to the original purchase order, it is the responsibility of the Contractor to submit a revised quote to the requestor



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

for a change order to be issued. Change order requests should be submitted before suspension of work when approval from CDCR is needed.

22.15 Labor hours shall detail the estimated number of labor hours for each stage of work, including but not limited to: roof work, equipment installation, sheet metal/duct work, pipefitters, and carpentry rates based on the price bid in the Bid Price Schedule.

22.16 Rental Equipment quote(s) shall be submitted with the quote, shall include all charges and fees, and shall be for the minimum number of hours or days required.

22.17 Permitting fees and permitted drawings, if directed by CDCR.

22.18 Quotes shall be priced as “Not to Exceed” amounts.

22.19 The City will not pay to have estimates/quotes prepared.

23. SUBCONTRACTORS

Nothing contained in the specifications will be construed as creating any contractual relationship between any subcontractor and the City. The Contractor agrees to inform the City of any subcontractor that will perform work on City property under the resultant agreement.

Any subcontractor needed for support must meet the same experience, insurance, security, and badging requirements as the Contractor. It is the Contractor’s responsibility to verify this information for its subcontractors and provide information to CDCR, if requested.

24. ADA REQUIREMENTS

The Contractor must maintain Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, maintenance, repairs, or any other services in an occupied building or facility. ADA and ANSI accessibility requirements include, but are not limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The Contractor will coordinate all work to minimize disruption to building occupants and facilities.



SECTION VI – SUBMITTALS

1. COPIES:

1.1 For In-Person and Carrier Delivery

If submitting a hardcopy offer to the City, please submit one original, one copy, and one electronic copy (portable thumb drive) of the Submittal Section and addenda(s). Please include updated W-9, a sample invoice and all other required documentation.

1.2 For Electronic Submittal via email

If submitting an electronic offer to the City via email, please submit one copy of the Submittal Section and addenda(s). Please include an updated W-9, a sample invoice and all other required documentation.

1.3 Please submit only the Submittal Section, do not submit a copy of the entire solicitation document. This offer will remain in effect for a period of 180 calendar days from the opening date and is irrevocable unless it is in the City’s best interest to release offer(s).

1.3.1 Please **DO NOT** submit links to Google Docs, Dropbox Paper, or similar services. Your offer may be deemed non-responsive if your offer is supplied utilizing these services.

1.4 Required documentation to be included with submittal:

- Current Universal EPA Certification for all service technicians.

2. COSTS AND PAYMENTS:

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

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

Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may



SECTION VI – SUBMITTALS

CITY OF PHOENIX

opt-out of the SUA program once, but then may not rejoin during the same contract term. For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.

3. BID PRICE SCHEDULE:

ALL OR NONE BID BY GROUP

Note: Prices offered shall not include applicable state and local taxes. The city will pay all applicable taxes. For the purposes of determining the lowest cost, the city will not take tax into consideration. Taxes must be listed as a separate item on all invoices.

GROUP I – COMMERCIAL (PUBLIC WORKS/PHOENIX CONVENTION CENTER)

Table with 5 columns: Item No., Description, Labor Price (Per Hour), Estimated Hours, Extended Price (Labor price x estimated hours). Rows include Regular Labor Rate, Premium Labor Rate, and Group I Grand Total.

1Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.

GROUP II – RESIDENTIAL (PUBLIC WORKS/PHOENIX CONVENTION CENTER)

Table with 5 columns: Item No., Description, Labor Price (Per Hour), Estimated Hours, Extended Price (Labor price x estimated hours). Rows include Regular Labor Rate, Premium Labor Rate, and Group II Grand Total.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.

GROUP III – DUCT DESIGN, INSTALLATION, AND FABRICATION (PUBLIC WORKS/PHOENIX CONVENTION CENTER)

Item No.	Description	Labor Price (Per Hour)	Estimated Hours ¹	Extended Price (Labor price x estimated hours)
1	REGULAR LABOR RATE (7:00 a.m. to 5:00 p.m. Monday through Friday, City holidays excluded)	\$	100	\$
2	PREMIUM LABOR RATE (All other hours, Saturday and Sunday, City Holidays)	\$	10	\$
GROUP III GRAND TOTAL *				\$

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.

GROUP IV – LOW TEMPERATURE COOLERS/FREEZERS (PUBLIC WORKS/PHOENIX CONVENTION CENTER)

Item No.	Description	Labor Price (Per Hour)	Estimated Hours ¹	Extended Price (Labor price x estimated hours)
1	REGULAR LABOR RATE (7:00 a.m. to 5:00 p.m. Monday through Friday, City holidays excluded)	\$	100	\$
2	PREMIUM LABOR RATE (All other hours, Saturday and Sunday, City Holidays)	\$	10	\$
GROUP IV GRAND TOTAL *				\$

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

GROUP V - COMMERCIAL (AVIATION)

Item No.	Description	Labor Price (Per Hour)	Estimated Hours ¹	Extended Price (Labor price x estimated hours)
1	REGULAR LABOR RATE (7:00 a.m. to 5:00 p.m. Monday through Friday, City holidays excluded)	\$	100	\$
2	PREMIUM LABOR RATE (All other hours, Saturday and Sunday, City Holidays)	\$	10	\$
GROUP V GRAND TOTAL *				\$

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.

GROUP VI – RESIDENTIAL UP TO 5 TONS (AVIATION)

Item No.	Description	Labor Price (Per Hour)	Estimated Hours ¹	Extended Price (Labor price x estimated hours)
1	REGULAR LABOR RATE (7:00 a.m. to 5:00 p.m. Monday through Friday, City holidays excluded)	\$	100	\$
2	PREMIUM LABOR RATE (All other hours, Saturday and Sunday, City Holidays)	\$	10	\$
GROUP VI GRAND TOTAL *				\$

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

GROUP VII – DUCT DESIGN, INSTALLATION, AND FABRICATION (AVIATION)

Item No.	Description	Labor Price (Per Hour)	Estimated Hours ¹	Extended Price (Labor price x estimated hours)
1	REGULAR LABOR RATE (7:00 a.m. to 5:00 p.m. Monday through Friday, City holidays excluded)	\$	100	\$
2	PREMIUM LABOR RATE (All other hours, Saturday and Sunday, City Holidays)	\$	10	\$
GROUP VII GRAND TOTAL *				\$

¹Estimate Hours are for evaluation purposes only.

*Grand total will be used to determine low bid.

PARTS AND MATERIALS:

DESCRIPTION	MARKUP PERCENTAGE
Parts and Material (markup may not exceed 15%)	Markup _____ %

4. EMERGENCY 24-HOUR SERVICE CONTACT:

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____

5. CONTRACTOR LICENSING REQUIREMENTS:

Offeror shall comply with all statutes and rules of the State of Arizona and the Registrar of Contractors. In accordance with A.R.S. §. 32-1151, and unless otherwise exempted by A.R.S. § 32-1121, Offeror shall have the correct class of license as required by the Registrar of Contractors for the work specified, at the time of offer submission. Offeror certifies possession of the following license:

Licensed Contractor's Name _____

Class _____



SECTION VI – SUBMITTALS

CITY OF PHOENIX

License Number _____

Expiration Date _____

- 6. **YEARS IN BUSINESS AND REFERENCES:** Contractor certifies that they have provided complete HVAC maintenance, repair, and replacement services for a period of _____ years.

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three firms or government organizations for which the Contractor is currently furnishing or has furnished, completed service for HVAC maintenance, repair, and replacement services.

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____



SECTION VI – SUBMITTALS

CITY OF PHOENIX

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 a solicitation.

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

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

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

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

Authorized Signature

Date

Verify Name and Type of Company
(LLC, Inc., Sole Proprietor)

Printed Name and Title
(Member, Manager, President)

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



SECTION VI – SUBMITTALS

CITY OF PHOENIX

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
Jeffrey Barton, City Manager

Joe Giudice
Public Works Director

Attest:

_____ this ____ day of _____ 2022
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.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

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

1. Name of person submitting this disclosure form.

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

2. Contract Information

Solicitation # or Name:

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

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

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

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

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.

Company Name _____



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:

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

Company Name _____



SECTION VI – SUBMITTALS

CITY OF PHOENIX

- 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

Company Name _____



SECTION VII – EXHIBITS

CITY OF PHOENIX

SECTION VII - EXHIBITS

EXHIBIT A

CITY OF PHOENIX PREVENTATIVE MAINTENANCE CHECKLIST

TECHNICIAN NAME:	DATE:	W.O#
FACILITY LOCATION:	LOCATION OF UNIT:	UNIT #
EQUIP TYPE: SPLIT - PACKAGE - WALL MOUNT GAS PACK -UNIT HEATER - EXHAUST FAN	HEATING TYPE: ELECTRIC - HP - GAS	MANUFACTURER:
MODEL #	SERIAL #	MFG DATE:
REFRIGERANT TYPE:	REFRIGERANT QTY: CIR 1 REFRIGERANT QTY CIR 2:	VOLTS: PHASE:
FILTERS: CLEAN/DIRTY FILTER DATE:	SIZE: SIZE:	QTY: QTY:

CONDITION OF EQUIPMENT: (2) GOOD 0-6 YEARS (3) FAIR 7-12 YEARS (4) POOR 13 + YEARS (5) FAILED/UNREPAIRABLE

FAN/BLOWER SECTIONS

- MOTOR: DIRECT DRIVE / ECM
- FAN MOTOR BEARINGS
- MOTOR AND BLADE BALANCED
- LUBRICATE
- INSPECT PULLEY
- REPLACE BELTS
- BELT SIZE: _____ QTY: _____
- ODM MOTOR TEMP _____

ELECTRICAL

- INSPECT/TIGHTEN CONNECTIONS
- INSPECT FOR LOOSE WIRES
- CHECK ALL ELECTRICAL COMPONENTS
- INSPECT/REPLACE CONTACTORS
- INSPECT/REPLACE CAPACITORS
- INSPECT ELECTRICAL DISCONNECT
- (Create work order if it needs replaced)
- Blow out/Dust Electrical Section

HEATING

- INSPECT FOR GAS LEAKS
- INSPECT COMBUSTION
- CLEAN BURNER
- CHECK SAFETY DEVICES
- INSPECT HEAT EXCHANGER
- INSPECT FLUE PIPE
- CYCLE REVERSING VALVE
- INITIATE DEFROST CYCLE

COIL SECTIONS

- CLEAN COILS
- INSPECT FOR LEAKS
- INSPECT FOR LINES RUBBING
- CHECK INSULATION
- CLEAN TRAP, PAN, AND DRAIN

COMPRESSOR

- CHECK AMP DRAW
- CHECK CAPACITOR
- CHECK FOR VIBRATION/NOISES
- CHECK FOR REFRIGERANT LEAKS
- CRANKCASE HEATER

MISC

- NO SCREWS ON ROOF
- ROOF CLEAR OF DEBRIS
- QUICK ROOF INSPECTION
- ALL PANELS SECURED
- ENSURE UNIT LABELED

SUPPLY AIR TEMP

HEATING: _____
COOLING: _____

RETURN AIR TEMP

OUTDOOR AMBIENT

RATED AMPS ACTUAL AMPS

COMPRESSOR 1	_____	_____
COMPRESSOR 2	_____	_____
OUTDOOR FAN 1	_____	_____
OUTDOOR FAN 2	_____	_____
INDOOR FAN	_____	_____

ONLY CHECK CHARGE IF CONDITIONS WARRANT CHECKING	
SUCTION PRESSURE	_____ PSI
DISCHARGE PRESSURE	_____ PSI
SUPERHEAT	_____ DEGREES
SUBCOOLING	_____ DEGREES

COMMENTS: _____

2/8/2022



EXHIBIT B
COOLER CHECKLIST

TECHNICIAN NAME:	DATE:	WORK ORDER:
FACILITY:	UNIT #	LOCATION OF UNIT:
MANUFACTURER:	CFM:	SIDE DRAFT / DOWN DRAFT
MODEL #:	SERIAL #	VOLTAGE: PHASE:
MOTOR HP:	PUMP SIZE:	PUMP VOLTAGE:
WET SECTION: MODEL #	SERIAL #	QUANTITY OF WET SECTIONS:
ASPEN MEDIA:	QUANTITY:	SIZE OF PADS:
CELL DECK MEDIA: CLEAN / REPLACE	QUANTITY:	SIZE OF PADS:

INSPECTION CHECKLIST: *Place check marks next to items after inspected*

DRY SECTION		ELECTRICAL	
Lubricate motor/blower bearings		Inspect and tighten electrical connections	
Replace Belts		Check Amperage Draw on Motor	
Belt Size: _____ Qty: _____		Ensure cooler pump is operational	
Blower wheel clear of debris		Inspect Electrical Disconnect (If Bad, Notify COP Rep)	
Ensure no water in dry section			
Inspect Pulley: OK / REPLACE			
WET SECTION			
Disassemble Wet Section to clean		Ensure Even Flow Across the pads	
Gently clean CelDek Pads		Verify Drain Line is Clear and Open	
Thoroughly Clean Basin		Ensure water not entering dry section with cooler running	
Clean Water Distribution System		Ensure all panels are secured	
Replace Float and Adjust		Ensure no screws or parts left on the roof	
Bleed of line installed and secured		Ensure job site is cleaned up	
Rate Condition of Equipment: Good / Fair / Bad			
COMMENTS:			

Revised 2/8/2022



EXHIBIT C

COMPLIANCE WITH ENVIRONMENTAL LAWS (AVIATION)

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

1. Definitions

- 1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.
- 1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.
- 1.3 *Contractor* means each person and entity that is a named party to this Contract.
- 1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's agents, officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.
- 1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.
- 1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, ordinances, and FAA advisory circulars and guidance documents promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:
 - A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.
 - B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.
 - C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.



SECTION VII – EXHIBITS

CITY OF PHOENIX

- D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.
- E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.
- F. Clean Air Act, 42 U.S.C. §§ 7401-7515.
- G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.
- H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.
- I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.
- J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.
- K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.
- L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.
- M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).
- N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.
- O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.
- Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.
- R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).



- S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.
- T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).
- U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

- A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.
- B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.
- C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules:
 - (i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).



SECTION VII – EXHIBITS

CITY OF PHOENIX

- (ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M
- (iii) NESHAP Notification Form and Delivery Requirement A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even when no asbestos is present.
- (iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).
- (v) RCRA waste determination and proper handling, transport, and disposal.

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

2. Compliance

- 2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or may result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.
- 2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and the Clean Water Act.
- 2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance this is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter



collectively referred to as “Losses”) to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” has the meaning prescribed above; (c) “Fault” means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

- 2.4 Contractor or Contractor’s Agents Release any Regulated Substance on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment. Subject to the City’s prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release. Contractor shall undertake its remedial actions without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor’s rights, if any, to seek contribution or indemnity from any other responsible party.
- 2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law related to Contractor’s use or occupancy of the Premises. Contractor’s obligation includes any requirement for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance on the Premises or the Airport.



SECTION VII – EXHIBITS

CITY OF PHOENIX

- 2.6 After giving Contractor at least ten (10) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.
- 2.7 Contractor shall immediately notify the City in writing upon the occurrence of any of the following:
- A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.
 - B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.
 - C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.
- 2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.
- 2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.
- 2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and present evidence thereof to the City.
- 2.11 Contractor shall take all reasonable precautions to prevent persons not acting under Contractor's authority, direction, or control from conducting any activity that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.
- 2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.



3. Breach and Termination

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

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

- A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.
- B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.
- C. The right to file an action or proceeding seeking to recover possession of the Premises.
- D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.
- E. The City may terminate this Contract.
- F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.
- G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.
- H. The covenants of this Exhibit shall survive the termination of this Contract.

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



4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance
- 4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.
- 4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in air transportation and associated activities.
- 4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.
- 4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor’s activities on the Premises and the Airport and enforce Contractor’s compliance with the Aviation Stormwater Policy.
- 4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports’ Stormwater



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

4.6 Contractor’s compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

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

4.8 AZPDES Multi-Sector General Permit.

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

- (i) Provide the City with a copy of Contractor’s written Authorization to Discharge that Contractor receives from ADEQ.
- (ii) Implement the Airports’ SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor’s use or occupancy of the Premises or the Airports.



SECTION VII – EXHIBITS

CITY OF PHOENIX

- B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.
- C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.
- 4.9 Pollution Controls.

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

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



- (i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.
- (ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.
- (iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

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

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EXHIBIT D

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

1. Definitions

- 1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.
- 1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.
- 1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.
- 1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

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

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

- A. Compliance with Regulations.** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.
- B. Nondiscrimination.** With regard to the work performed by it under this Contract, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.



- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports.** The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.
- E. Sanctions for Noncompliance.** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:
- (i) Withholding payments to Contractor under this Contract until Contractor complies, and/or
 - (ii) Cancelling, terminating, or suspending this Contract, in whole or in part.
- F. Covenant Running with the Land.** Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination



covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.

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

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

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

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



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

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

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

- A. **Contract Assurance (§ 26.13).** To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.
- B. **Prompt Payment (§ 26.29).** Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.



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

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

2.6 Miscellaneous

- A.** Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.
- B.** City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.
- C.** The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.
- D.** Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby



SECTION VII – EXHIBITS

CITY OF PHOENIX

consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

- E.** This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.
- F.** Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.
- G.** Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.
- H.** Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).
- I.** This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.



- J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.
- K. Contractor is encouraged to use fuel and energy conservation practices.

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

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

4. Conflict of Interest

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

5. Legal Worker Requirements

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

- A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).
- B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.
- C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

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



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

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

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

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

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

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



7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).
- B.** 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).
- C.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, et seq.) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).
- D.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, et seq.), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).
- E.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, et seq.) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).
- F.** The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).
- G.** Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).
- H.** Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against minority populations by discouraging



SECTION VII – EXHIBITS

CITY OF PHOENIX

programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

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

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

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