

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TW ASSOCIATES, INC., DBA MISCOWATER**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 2021, between the City of Glendale, an Arizona municipal corporation (the "City"), and TW Associates, Inc., dba MiscoWater, a(n) California Corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On September 25, 2020 under S.A.V.E Cooperative Purchasing Agreement, the City of Tempe entered into a contract with Contractor to purchase the goods and services described in the Sludge Removal Parts Contract No. WUD20-094-01. ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was September 25, 2020, until the date the contract expires on September 24, 2021 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond September 24, 2025. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until September 24, 2021. The City may renew the term of this Agreement for (4) four one-year

terms until the Cooperative Purchasing Agreement expires on September 24, 2025. Glendale renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed Five Hundred Thousand dollars (\$500,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393. Unless and until the District Court's injunction in *Jordahl v Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35.393.01 (A)) (if applicable to this agreement) is unenforceable and the City will take no action to enforce it.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Julie Ossege
7070 W. Northern Ave.
Glendale, AZ 85303

And

MiscoWater
Stefan Orshkov
27101 Burbank Suite B
Foothill Ranch, CA 92610

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

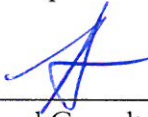
“City”

City of Glendale, an Arizona
municipal corporation

By: _____
Kevin R. Phelps
City Manager

“Contractor”

TW Associates, Inc., dba MiscoWater,
a California Corporation

By:  _____
Name: Richard Grandt
Title: Authorized Representative

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
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AND
TW ASSOCIATES, INC., DBA MISCOWATER**

EXHIBIT A

(City of Tempe Contract No. WUD20-094-01 - Sludge Removal Parts)

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AND
TW ASSOCIATES, INC., DBA MISCOWATER**

EXHIBIT B
Scope of Work

PROJECT

Contractor will provide sludge removal parts for the City of Glendale per the City of Tempe Contract No. WUD20-094-01 Pricing Details.

EXHIBIT A

Contract Award Notice

Internal Services
Procurement Office
20 E. 6th Street
Tempe, AZ 85281



Contract Number: WUD20-094-01
Description: Sludge Removal Parts

0000089196
Misco Water
Stefan Orshkov
27101 Burbank Suite B
Foothill Ranch, CA 92610

Award Period
Beginning: September 25, 2020
Ending: September 24, 2021

Potential Renewals Four, One Year Renewal Options

Point of Contact: Stephen Orshkov
Phone Number: (480) 415-7846 (Cell) (480) 940-6923 (Office)
Email Address: soreshkov@miscowater.com

This Contract Award Notice is issued for the purchase of goods, materials and/or services as requested by the above noted solicitation/contract number. The contract shall remain in effect as noted in the award period block unless extended, renewed or canceled per terms and conditions of the solicitation.

It is to be noted that any contracted vendor document(s) that conflict with the language and requirements of the City's solicitation are not acceptable and will void the contract. In addition, contracted vendor is not to begin work or make delivery of awarded items until any and all required insurance and/or performance bonds are posted with the City Procurement Office.

If contracted vendor has a change of address for mailing payments and/or for mailing future bid solicitations, it is the vendor's responsibility to notify the City Procurement Officer identified with this contract and to ensure all such mailing address information is kept current.

Please note that your City of Tempe contract number should appear on all shipping documents, invoices and statements. Invoices are to be sent directly to the requesting department.


Award Details:


(All terms and conditions of this Award Document are per the City's Solicitation Document)

The enclosed price sheet provides pricing details of sludge removal replacement parts to indicate part number, description, City's estimated quantities, and the extended cost of the estimated quantities by line item.

There is no minimum purchase order amount, and products/items should be delivered within 4-7 weeks, or sooner.

There is a 10% discount off the list price of like or similar sludge items and/or products supplied by this firm.


Shireen Boone, CPPO, CPPB
Procurement Officer


Michael Greene, C.P.M., CPPO
Procurement Administrator



REQUEST FOR PROPOSAL

RFP# 20-094 SLUDGE REMOVAL PARTS (Basins 7 and 8)

RFP ISSUE DATE:
FEBRUARY 7, 2020

MANDATORY - PRE-PROPOSAL CONFERENCE:
On-Site February 18, 2020, 8:00 A.M. PHOENIX TIME

DEADLINE FOR INQUIRIES/QUESTIONS:
FEBRUARY 20, 2020 AT 5:00 P.M. LOCAL PHOENIX TIME

RFP DUE DATE AND TIME:
MARCH 4, 2020, 3:00 P.M. LOCAL PHOENIX TIME

ALL INQUIRIES MUST BE DIRECTED TO:
SHIREEN BOONE, CPPO, CPPB
EMAIL: Shireen_boone@tempe.gov
PHONE: 480-350-8617

SUBMITTAL LOCATION: CITY OF TEMPE PROCUREMENT OFFICE
20 EAST SIXTH STREET, 2ND FLOOR
TEMPE, ARIZONA 85281

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General Instructions

Failure to follow these instructions may result in rejection of proposal for non-responsiveness or cancellation of any Contract awarded.

1. **Preparation of Proposal:**

- A. Proposals shall be submitted to the City of Tempe ("City") in the sequence specified herein, on the forms attached hereto, including Vendor's Offer (Form 201-B).
- B. All proposals shall be submitted on the forms provided in this Request for Proposal, signed by an authorized signer and returned with the proposal response to the City.
- C. Completed and signed proposal forms for Vendor's Offer and any solicitation addendums shall be signed by an authorized individual. Such proposal constitutes an irrevocable Offer to sell the good and/or service specified herein. Offeror shall submit all additional data, documentation, or information as requested by the City, signifying its intent to be bound by the terms of the Request for Proposal.
- D. Negligence in preparation of a proposal confers no right of withdrawal. Offeror is solely responsible for seeking clarification of any requirement and presenting accurate information in the proposal response. The City shall not reimburse any costs for a proposal, or its submission, presentation or withdrawal, for any reason. Failure to read, examine and understand the Solicitation and any of its addenda will not excuse any failure to comply with the requirements of the Solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation.
- E. Offeror shall identify each subcontractor to be utilized in the services and/or work set forth herein, if applicable.

2. **Definitions:** For purposes of this Request for Proposal and resultant Contract, the following definitions apply:

- A. "City" means the municipal corporation of the City of Tempe, Arizona.
- B. "Code Governance" means unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
- C. "Contract" means the agreement for the procurement of goods, equipment, materials, software, maintenance, contracted services, professional services, or concessions.
- D. "Contractor" means an Offeror responding to a Request for Proposal who has been awarded a Contract with the City.
- E. "Offer" means a written offer to furnish goods, equipment, materials, software, maintenance, contracted services, professional services, or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
- F. "Offeror" means a business, entity or person who submits an Offer in response to a competitive solicitation.
- G. "Public Record" means proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award.
- H. "Purchase Order" means a document issued by the Procurement Office directing the Contractor to deliver the goods, equipment, materials, software, maintenance, contracted services, professional services or concessions. to the City.
- I. "Request for Proposal" means a competitive solicitation issued by the City for the procurement of goods, equipment, materials, software, maintenance, contracted services, professional services or concessions.

General Instructions

3. **Late, Unsigned and/or Incomplete Proposal:** A late, unsigned and/or materially incomplete proposal will be considered nonresponsive and rejected.
4. **Inquiries:** Questions regarding this Request for Proposal shall be directed to the Procurement Officer identified on the cover page of this document, unless another City contact is specifically named. Inquiries shall be submitted in writing (preferably via e-mail), identifying the appropriate Request for Proposal's number, page and paragraph at issue. **PLEASE NOTE: Offeror must not place the Request for Proposal's number on the outside of an envelope containing questions.** Oral responses provided by the City shall have no binding effect or legal effect. Inquiries should be submitted within the designated timeframe noted on the front page of the solicitation. Those questions received after the designated date may be considered at the sole discretion of the Procurement Officer. The City reserves the right to contact Offerors to obtain additional information for use in evaluating proposal and solicitation requirements.
5. **Proposal Conference:** If a proposal conference is scheduled, Offerors are strongly encouraged to attend to seek clarification on any aspects of the documents that are not clear or questions that might pertain the specifications or scope of work published. There are times when attendance at a proposal conference is mandatory and those conferences shall be specially noted when applicable.
6. **Withdrawal of Proposal:** At any time before the specified proposal due date and time, an Offeror may withdraw its proposal by way of written correspondence from the Offeror or its authorized representative.
7. **Proposal Addenda:** Receipt and acceptance of a Request for Proposal addendum shall be acknowledged by signing and returning the document either with the vendor's proposal response or by separate envelope prior to proposal due date/time. Failure to sign and return an addendum prior to the proposal due date/time may result in the proposal being considered nonresponsive to that portion of the Request for Proposal and may result in rejection. For all addenda published, the City will send electronic notification to those companies who have downloaded the solicitation from the City's web site. If a company receives the solicitation via a third- party plan holder organization, it will be the responsibility of the company to download the solicitation from the City's web site to ensure that their company is included on any forthcoming addenda notification.
8. **Compliance with City Solicitation Requirements:** Unless stated otherwise in this Request for Proposal, the City reserves the right to award by individual line item, by group of items, or as a total at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this Request for Proposal.
9. **Compliance of Proposal Offeror/Contractor Forms:** Any documents or forms (including separate Contract, maintenance agreement or training agreement) intended by the Offeror to be utilized in any resulting Contract, must be submitted with proposal. Any documents inconsistent with or taking exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the proposal to be considered as nonresponsive and rejected. No documents will be considered unless submitted with vendor's proposal Offer and approved by the Procurement Office.
10. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if the Offeror's proposed product(s) and/or service(s) is/are capable of performing the function(s) specified in the Request for Proposal.

It is recognized that more than one method may be used to accomplish the sought-after task functionality. If Offeror has an alternate method of performing functional tasks, then Offeror shall list such method as an "alternate" and described in full detail within the proposal. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by the Offeror. Should no Offeror be found responsive to all designated Request for Proposal requirements, the City at its option, may either award the Contract to the most responsive Offeror or cancel the Request for Proposal and issue another Request for Proposal for the need under revised specifications.

General Instructions

11. **Questionnaire:** Offeror must complete the Questionnaire portion of this Request for Proposal and provide any documentation required to support the answers. Questionnaire items, which are designated as mandatory, are needed to satisfy a required task or performance criteria. Items, which may be listed as desirable, are not required to be responsive to the Request for Proposal and will be relatively evaluated against other proposals in making a final award decision.

If supporting documentation is required, Offeror shall provide the documentation in the sequence set forth in the Request for Proposal and ensure all technical literature and/or narrative explanations fully address the specifics of the question. Vague or disorganized responses that do not allow sufficient information for evaluation purposes may result in rejection of a proposal.

12. **Clarifications and Negotiations with Offerors and Revisions to Proposal:** Clarifications may be made with any submitting firm at any time during the evaluation phase of this procurement. Clarifications are not negotiations and may be utilized by the City to ensure thorough and complete understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of negotiations is to allow the City and the Offeror(s) to revise initial Offers through an exchange or series of exchanges. Should the City elect to call for best and final offers, Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiations and revision of proposals, and such revisions may be permitted after submissions and prior to award. In conducting clarifications and negotiations there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such negotiations shall include but not be limited to:

- A. Determine in greater detail such Offeror's qualifications;
- B. Explore with the Offeror the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
- C. Determine that the Offeror will make available the necessary personnel and facilities to perform within the required time; and
- D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

13. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this Request for Proposals. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in its evaluation. Prices shall not be read. After Contract award, the proposals and the evaluation documentation shall be open for public inspection, except where the City has determined that specific portions of the proposal are confidential.

14. **Technical Proposal Opening:** Technical proposals (as received in step one of a two-step bidding process) shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in the evaluation. Evaluation documentation to substantiate technical proposal selection(s) shall be open for public inspection.

15. **Proposal Evaluation and Award:** The City shall determine whether a proposal meets the specifications and requirements of this Request for Proposal, at its sole discretion, and reject any proposals not meeting the intent or requirements set forth herein. Award(s) shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the Request for Proposal. The City shall be the sole judge as to the acceptability of the products and/or services offered. The City reserves the right to reject any and all proposals.

General Instructions

16. **Award of Contract:** A proposal shall constitute a binding Offer to Contract with the City based on the terms, conditions and specifications contained in this Request for Proposal. An Offeror shall become a Contractor only upon execution of a formal Contract from the Procurement Office. Unless this Request for Proposal includes separate Contract document(s) or requires the Offeror to submit a Contract for review, a Contract shall be formed when the Procurement Office provides a written notice of award or a purchase order to the successful Offeror. All terms and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Proposals that take exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the vendor's Offer to be considered non-responsive and rejected. Exceptions will be evaluated on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification set forth herein.
17. **Proposal Results:** Offerors may attend the scheduled proposal opening at which the name of each Offeror will be publicly read. All other information contained in the proposals shall be kept confidential until the Contract is awarded. After award of Contract, an appointment may be made with the Procurement Officer to review proposal documents. Formal Contract award results shall be placed on the Procurement Office web page (www.tempe.gov/procurement) and posted at the front counter of the Procurement Office at the time the Contract award is approved by the City Council. Award recommendations may also be viewed via the City Clerk's web site normally up to five (5) days prior to the scheduled City Council meeting by visiting (http://documents.tempe.gov/sirepub/?sort=meet_date).
18. **Protests:** Any actual or prospective Offeror who is aggrieved in conjunction with this Request for Proposal or award may protest the award to the Procurement Office. A protest based upon alleged improprieties in this Request for Proposal that are apparent before the proposal opening shall be filed prior to the proposal due date/time. A protest concerning an award recommendation must be filed within ten (10) business days after the date of award. Up to five (5) days before award of a contract, the Procurement Office will post award recommendations on the City Clerks website at (http://documents.tempe.gov/sirepub/?sort=meet_date) and at the Procurement Office front counter and web site for public review (www.tempe.gov/procurement). A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or Contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the form of relief requested. A protest is to be on the protester's company letterhead and signed by the protestor or its authorized representative.
19. **Delivery:** All materials, equipment and/or products shall be delivered F.O.B. Destination to the City of Tempe Per the location identified in the solicitation.
20. **Tax:** Unless specified herein, sales, use or federal excise tax shall not be included in proposal pricing. The City is exempt from payment of federal excise tax. For proposal evaluation, transaction (sales) privilege tax paid to the City of Tempe (1.8%) is considered a pass-through cost, calculated as zero (\$0) expense when comparing pricing among competing companies that are not located in Tempe. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at salestax@tempe.gov
21. **Payment:** For a single requirement purchase, the City will endeavor to remit payment within thirty (30) calendar days from receipt and approval of acceptable products, materials and/or services and approval of correct invoice. For ongoing term Contract purchases, the City will endeavor to remit payment within thirty (30) calendar days from approval of invoice.
22. **Discounts:** Payment discounts periods shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. The City shall be entitled to receive any discounts offered by Offeror, if payment is made within the discount period.
23. **Payment by City Procurement Card:** The Procurement Office may elect to remit payment through the use of a City procurement card. Each Offeror may indicate on the Vendor's Offer Page in this Request for Proposal its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a proposal.

General Instructions

24. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
25. **Public Record:** Proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of Public Record available for review following the Contract award. Material portions of the recommended Offer(s) as determined by the City may be posted to the City's web site up to five (5) days prior to the City Council meeting.
26. **Late Responses:** The Offeror assumes responsibility for having the Proposal delivered on time at the place specified. All Offers received after the Solicitation Due Date and Time shall not be considered and will be returned unopened to the Offeror. The Offeror assumes the risk of any delay in the mail or in handling of the mail by employees of the City of Tempe (with exception of Procurement staff) or any private courier. Offerors must allow adequate time to accommodate parking and accessing building in the event the Proposal is being hand delivered. All times referenced are Tempe, Arizona local times. Respondents agree to accept the time stamp in the City Procurement Office as the official time.
27. **Copying Responses:** The Offeror hereby grants the City permission to copy all parts of its Offer including, without limitation, any documents and/or materials copyrighted by the Offeror. The City's right to copy shall be for internal use in the evaluating the Offers.
28. **Confidential Information and Public Record:** After award of a Contract, proposals shall be available for public inspection, except to the extent that the withholding of information is required or permitted by law. Pursuant to A.R.S. § 35-214, and 41-1330 *et seq.*, all records relating to the Request for Proposal and Contract shall be subject to inspection at all reasonable times by the City for five (5) years after completion of the Contract. Such records shall be produced by Bidder or Contractor at the time and place designated by the City.
 - A. If a person believes that an offer or specification contains information that should be withheld as confidential, a statement advising the procurement officer of this fact shall accompany the submission and the information shall be so identified wherever it appears. A general statement of confidentiality that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
 - B. The information identified by the person as confidential shall not be disclosed until the Procurement Office makes a written determination pursuant to A.R.S. § 121, *et seq.*
 - C. If the City determines to disclose the information, the Offeror shall be informed in writing of such determination. Notwithstanding the foregoing, following an award of Contract, all proposal response information shall be available for public inspection.

Standard Terms and Conditions

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes, or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13, 2005-02, and 2010-14 with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. Offeror agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Offeror further agrees to provide a copy of its antidiscrimination policy to the Procurement Officer to demonstrate compliance with TCC section 2-603(5) or attest in writing to its compliance in accordance with the attached Affidavit of Compliance.
 - C. 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. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.
 - E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.

Standard Terms and Conditions

- F. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
- G. If Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842. Unless and until the U.S. District Court, District of Arizona's injunction is lifted, A.R.S. § 35-393.01 is unenforceable.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Termination for Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511. The City may cancel this Contract within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Contract for the City becomes an employee or agent of the Contractor.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written Contract modification issued by the Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the Procurement Office and issuance of an official modification notice.
10. **Contract Administration:** Contractor must notify the designated Procurement Officer from the Procurement Office for guidance or direction on matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

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11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.mesaaz.gov/business/purchasing/save> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable along with the correct unit cost. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

A. In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from the receipt of the written notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide written notice of the default does not waive any rights under the Agreement. The occurrence of any one or more of the following events shall constitute a material breach of and default under the Contract.

- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;

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- ii) Any party's failure to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor or City herein, including but not limited to failing to submit any report required herein;
 - iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives either party reason to believe that the other party cannot or will not perform to the requirements of the Contract; or,
 - iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.
- B. In the event the default has not been corrected to the non-defaulting party's satisfaction within the cure time specified, the non-defaulting party, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:
- i) Terminate the Contract;
 - ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
 - iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result therefrom, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the project; (b) costs incurred in selecting and retaining a substitute Contractor for the purchase of services, materials and/or work; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising therefrom.
- C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.
- D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.
- E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- F. Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made, and no written assurance is given within the time period required, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

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18. **Force Majeure:**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.
- C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, or caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

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22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.
- A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.
- B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.
23. **Licenses and Permits:** Contractor shall maintain in current status and at its sole expense, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor and the provision of the services to be provided under the Contract.
24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City, which consent may be granted or withheld in City's unfettered discretion.
25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:
- City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280
- [Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]
- Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.
26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and/or services used to fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the equipment involved. Equipment is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to equipment and system performance, if any, shall be calculated as specified in the Request for Proposal.

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29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.
30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions by Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered Public Record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-151, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or Procurement Office.
34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent Contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.

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38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 ("Order");
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.
41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapons permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall apply to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

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43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source.
45. **Ordering Process:** Upon award of a Contract by the Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.
46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms & Conditions and Instructions

Proposals taking exception to Special Terms & Conditions and Instructions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for 120 days after the proposal due time and date.
3. **Contract Type:** Term with justifiable price adjustments allowed, indefinite quantity.
4. **Term of Contract:** The term of the Contract shall commence on the date of award and shall continue for a period of one (1) year thereafter, unless terminated, canceled or extended as otherwise provided herein.
5. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for ninety (90) days beyond the stated term. In addition, the City at its option may renew for supplemental terms of up to a maximum of four (4) additional years. The period for any single renewal increment shall be determined by the Procurement Office. Such increment shall not be for more than a period of one (1) year each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
6. **Pricing:**
 - A. Pricing accuracy and completeness are critical to the determination of an award. Offeror shall identify and price all items being proposed.
 - B. In the case of system proposals, Offeror shall identify all items which are required to make the system function in accordance with the specifications stated in the Request for Proposal.
 - C. If provided pricing pages do not cover all such items, the Offeror shall include an itemized listing of all required products and services in the Proposal required for all system equipment to be fully functional and in conformity with specifications stated in the Request for Proposal.
7. **Price Adjustment:**
 - A. The Procurement Office will review fully documented requests for price increases after the Contract has been in effect for 12 months. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the Proposal and can be shown to directly affect the price of the item concerned. The Procurement Office will determine whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the Procurement Office. After the City approves a price increase the Contractor shall not be eligible to receive an additional increase until 12 months from the date of the last approved price increase.
 - B. Price increase requests must be acknowledged in writing by the Procurement Office before becoming effective. If not acknowledged within thirty (30) days, Contractor shall contact the Procurement Office to ensure the price increase request was received.
 - C. The Contractor shall offer any published price reduction or if applicable to the Contract, profit sharing price advantage to the City concurrent with its announcement to other customers. A price reduction or profit-sharing price advantage may be offered at any time during the term of an awarded Contract and shall become effective upon notice and acceptance. The City shall likewise be given any special sales discounts

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offered to the general public, which exceed contracted price discounts extended to the City by the Contractor.

8. **Turnaround Time:** Offeror must be capable of providing a work completion turnaround time for requested delivery of materials and/or services within the time stated in this Request for Proposal. Turnaround time is defined as the time frame beginning with the Contractor being notified of a need by the City and ending with the delivery of the work in completed form back to the City within the specified time. Proposal shall provide any required pick-up and delivery as part of the proposed price response to the City.
9. **Change Order:** The City Procurement Office reserves the right to execute change orders reflecting a quantity increase within ninety (90) days from Contractor's initial delivery date. No change order will be executed outside of the scope of the City's Request for Proposal and the Contractor's Proposal and price response.
10. **Samples:** Samples of items, when requested, must be submitted within a reasonable period of time. Unless otherwise specified by the City Procurement Office, samples will be furnished at no expense to the City. Samples must be identified as to supplier, manufacturer, part number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at Offeror's request and sole expense. If no instructions are received for their return, samples will be discarded thirty (30) days after award date.

11. **Insurance:**

- A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to the Contractor until receipt of all required insurance documents by the Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be on file with the Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the Procurement Office or the award may be rescinded and another Offeror selected for award.

- B. **Minimum Limits of Coverage:** Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

- i. **Minimum Limits of Insurance.** Contractor shall maintain the following minimum limits:

- a. **Commercial General Liability**

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance.

Special Terms & Conditions and Instructions

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In cases when services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. Additional Insured: The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
- D. Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
- E. Primary Coverage: Contractor's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
- F. Claim Reporting: Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- G. Waiver: The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
- H. Deductible/Retention: The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- I. Certificates of Insurance: Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation,

Special Terms & Conditions and Instructions

termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.

J. **Copies of Policies:** The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

12. **Payments - After Acceptance of Delivery:** Payment in full shall be made to the Contractor within thirty (30) days after receipt and acceptance of delivery by the City, unless terms other than net thirty (30) days are offered as a discount, at the City's sole discretion.

13. **Contract Submittal:** Offeror is to furnish a copy of its proposed Contract with its proposal response. Contractual considerations are an important evaluation factor and will be considered in making an award decision. Any proposed Contract should be tailored to the specific requirements of the City's Request for Proposal and overall conformity with the City's Request for Proposal requirements. The failure of an Offeror to reach an acceptable Contract to the satisfaction of the City will result in proposal rejection.

14. **Conduct and Dress Code:** The Contractor's employees shall maintain proper conduct at all times while on City property. Employees shall maintain a professional demeanor and show respect to other personnel at the work site. Employees will be dressed appropriately for the work with badges or uniforms that identify them as employees of the Contractor.

Employees will be neatly dressed with badges or uniforms that identify them as employees of the Contractor.

15. **Employees of the Contractor:** No one except authorized employees of the Contractor is allowed on the premises of the City of Tempe. Contractor employees are NOT to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized employee of the Contractor. Failure of Contractor to meet this requirement will result in permanent removal of employee performing work at the City of Tempe sites. The Contractor must, however, furnish the City a current employee register on the issuance of this Contract and updated every six (6) months thereafter. This register must contain the Name, Social Security Number, Phone Number, and Address.

16. **Sub-Contractors Not Allowed:** The City will only consider offers from prime contractors. No subcontractors will be allowed at any time during the term of the contract.

Specifications and Scope of Work

The purpose of this Request for Proposal (RFP) is to establish a term contract for the purchase of Sludge Removal Replacement Parts on an as-needed basis for the City Municipal Utilities, Water Utilities Division. The term of the resulting contract shall be for one (1) year with an opportunity to renew for an additional four (4) years as provided for within the Special Terms and Conditions Section of this Request for Proposal (RFP). Renewals shall be executed when contractor has provided high quality service with demonstrated cost containment efforts.

Only the parts specified in the Price Sheet in this RFP shall be offered and no other manufacturer will be considered. Firm's that wish their products to be approved for use by the City of Tempe will need to contact the Procurement Officer listed in the RFP Communications/Inquiries section of this bid.

This RFP shall be awarded on an all or none basis to one vendor.

Basins seven (7) and eight (8) are the only basins remaining in this project, with one (1) being completed per year.

Annual Spend

Estimated Annual Spend - \$150,000 to \$200,000

RFP Communications/Inquiries

If you have any questions regarding this submittal that would aid you in presenting more precise and accurate information please feel free to contact Shireen Boone at Shireen_Boone@tempe.gov (note: there is an underscore between first and last names). The City very much appreciate your time and effort in responding to this RFP.

NOTE: The City will only consider offers from prime contractors. No subcontractors will be allowed at any time during the term of the contract.

Mandatory Pre-Offer Site Visit:

A site visit is schedule for February 18, 2020 at 8:00 A.M Phoenix time, to view equipment/product to be removed. **Mandatory** site visit will be held at the City of Tempe Johnny G. Martinez Water Treatment Plant at 255 East Marigold Lane, Tempe, AZ 85281. Those attending will be required to use guest parking. See map below. **Please RSVP by February 17 at 2:00 P.M., by calling 480-350-2601.**

All persons are required to check in at the Administration building reception desk and to present a driver's license to participate in the pre-bid site visit. Those that do not have a driver's license will not be admitted to the plant. No exceptions will be made.

At the site visit, firms may ask questions; however firms are reminded that no answers issued verbally are binding on the City. Also, no information provided at the site visit, unless it is later issued in writing, is binding on the City. Firms are encouraged to put their questions in writing after the site visit and e-mail them no later than two (2) business days following site visit.

Firms that wish to enter the basin are required to submit their confined space plan and proof of training to the City's Risk Management Division for review, by emailing the documents to Shireen Boone at Shireen_boone@tempe.gov (note: there is an underscore between first and last names). Confined space plan and proof of training must be e-mail be 12 noon, on February 14, 2020. Firms that do not submit their confined space plan and proof of training will only be permitted to view the job site from the upper deck. Firms will be allowed to take photo of the work area only. **There will be no exceptions given for these requirements to be met in order to enter the basin.**

Specifications and Scope of Work



Order Placement

There shall be no minimum purchase or order required for the City.

The contracted vendor should deliver ordered product four (4) to seven (7) weeks after receipt of order. All products sold to the City shall be new.

Packing Slip and Invoicing

Packing Slips and Invoicing – Must be itemized and reference City department requisition number (DPO). Any parts or supplies received with defects shall immediately be replaced at no charge by the Contractor. Invoices are be mailed to: City of Tempe, Attn: Plant Supervisor - MUD, P.O. Box 5002, Tempe, Arizona 85280.

Delivery Location

Jonny G. Martinez Water Treatment Plant
Attn: Plant Supervisor
255 East Marigold Lane
Tempe, AZ 85281

Specifications and Scope of Work

Pricing

Offerors are to provide pricing for each line item listed on the Price Sheet.

Questionnaire

Offerors are to completely answer each question contained in the Questionnaire, which will be used to evaluate the proposals. The City is the sole judge as to determining what is in the best interest of the City.

Proposal Questionnaire

“Return this Section with your Response”

Questionnaire responses and supporting documentation provided will be used to evaluate the proposal. In order to evaluate an Offeror's overall experience to provide the Specifications and Scope of Work described herein, the City may rely on additional resources beyond the information provided.

Offeror shall submit answers to the following questions. Responses will be utilized in determination of contract award.

NOTE: Offeror must provide responses in the space below. Do not reference your company's materials in response to the questions below as there is no guarantee that those materials will be reviewed by the Evaluation Committee. Not responding with a complete answer to the questions below could cause your proposal to be rejected and determined as not susceptible for contract award.

Evaluation Factor 2 - Experience and Expertise of Company		
	<u>Question</u>	<u>Response</u>
1	Describe your company's experience, qualifications, and its history – including years in business.	MISCOWater provides process and equipment solutions to the municipal water, wastewater, and energy markets since 1972. MISCOWater is a leading Manufacturers' Representative of process equipment for Water Treatment and Wastewater Treatment, in California, Nevada, Arizona, Denver and New Mexico. We specialize in providing reliable, proven, innovative and life cycle cost-effective solutions for municipal wastewater treatment and municipal water treatment. We represent over 50 companies that provide quality process equipment.
2	Provide contact information for the primary account representative and a backup contact for the City of Tempe. <ul style="list-style-type: none"> • Contact Name • Position Title • Phone Number • Cell Phone Number • Email Address 	Contact 1: Stefan Oreshkov Direct Plant Sales 480-940-6923 480-415-7846 soreshkov@miscowater.com Contact 2: Dave Redman Engineering Sales 480-940-6923 480-415-7303 dredman@miscowater.com

Proposal Questionnaire

"Return this Section with your Response"

3	<p>List three (3) government references (preferred) or large corporate references, for which you have provided services listed in the scope of work.</p> <ul style="list-style-type: none"> • Organization/Company Name • What type of work • Contact Name • Phone Number <p>Number of years the service has been provided</p>	<p>Reference 1: City of Phoenix Chain & Flight Equipment, Disinfection (Chlorine gas) Equipment, valves and Actuators & Pumps. Mark Miles 602-309-5250 Over 10 years</p> <p>Reference 2: Town of Queen Creek Valve and Actuation Services Brian Quill 480-430-1073 6 years</p> <p>Reference 3: Pima County Actuations, Waste water equipment, Pumps, Gates, Craig Schessler 520-343-1362 Over 10 years</p>
4	Has this company gone by a different name in the last 3 years? If yes, provide names.	No
5	Within the previous five (5) years has your firm been debarred from contracting with any local, state, or federal governmental agency?	No
6	Within the previous five (5) years has your firm defaulted on any government contract?	No
7	Is your firm in the process of or in negotiations toward being sold?	No
Evaluation Factor 3 - Methodology		
1	Will your firm be able to deliver proposed product within four (4) to seven (7) weeks after receipt of order? If no, please explain.	Some of the parts under the RFP have lead time between 10-12 weeks. Majority of the parts can be delivered between 6-8 weeks after receipt of order.
2	What are your company's warranties/guarantees on materials and workmanship?	Eighteen (18) months from delivery of the Work or twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period").
3	Explain your company's return policy.	All items in new conditions can be return with freight covered by the buyer and 15% restocking fee.

Proposal Questionnaire

"Return this Section with your Response"

4	Does your company agree to all terms and conditions in this RFP?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If No, provide the term, redlining to modify, and an explanation why. NOTE: Taking exception to any term in this RFP may cause the Proposal to be considered nonresponsive and rejected.
5	Does your company require a side agreement or any document to be signed prior to conducting work? If so, include the document in with your proposal.	No

Evaluation Criteria

Proposals **will** be reviewed by an Evaluation Committee consisting of City staff using the criteria and process outlined below.

Evaluation Process

1. The Procurement Office will verify that all proposals meet the requirements to be considered responsive. Responses that do not comply with any mandatory requirements will be considered non-susceptible for award and not forwarded to the Evaluation Committee for scoring.
2. The Evaluation Committee will review and score all responsive proposals and rank them based on the committee's scores. Any proposals determined to score outside of the competitive range may be removed for non-susceptibility. Remaining Offerors may be invited for interviews, negotiations, site visits and best and final offers as determined at the sole discretion of the City.

It is important to note that firms may be removed for non-susceptibility anytime during the evaluation process and not just at the specific points noted above.

*****FOR CITY USE ONLY**

Award Criteria		Weight	x	Rating	=	Points
1	Price	40	x		=	
2	Experience and Expertise of Company	20	x		=	
	a Company Qualifications					
	b References					
3	Methodology	40	x		=	
	a Warranty					
	b Return Policy					
	c Acceptance of Terms and Conditions and Company's Separate Terms (if applicable).					
Total		100%				

This proposal will be evaluated on a cumulative point system.

Scoring

Outstanding	9 to 10
Good	7 to 8
Average	4 to 6
Poor	0 to 3

To evaluate the cost portion of the above criteria, the City may elect to evaluate each firm on a percentage basis of the lowest cost Offer. The formula would be: (Lowest Priced Offer/Evaluated Firm's Price) X Points Possible = Evaluation Points.

Pricing Section

"Return this Section with your Response"

Complete Excel Price Sheet spreadsheet provided as a downloadable document with this RFP.

Pricing Section

"Return this Section with your Response"

Less prompt payments discount terms of 0 % days/ or net thirty (30) days. (To apply after receipt and acceptance of an itemized monthly statement.) For evaluation purposes, the City cannot utilize pricing discounts based upon payments being made in less than thirty (30) days from receipt of statement.

Ordering and Invoice Instructions

Invoices shall be issued directly to the ordering department. Invoices shall be accurate and complete including the information shown below. Failure to provide a properly documented invoice may cause a delay in receipt of payment. The City will not process an invoice for payment until it has been approved by the ordering department and forwarded to Accounts Payable. The City endeavors to process invoices within 30 days after receipt of an accurate and complete document.

Invoices shall include:

1. Line item listing of all ordered items to include description of items;
2. Unit cost and extended cost for each line item;
3. Applicable Tax;
4. Payment Terms;
5. Purchase Order Number;
6. Name of selling organization clearly stated on invoice along with address;
7. Phone number and or e-mail address for contact person to clarify invoicing questions;

Invoices that do not follow the above minimum invoicing requirements will not be paid. Payment must be applied to only invoices referenced on check/payment stub. The City reserves the right to process payments via check or P-Card.

Accounting Contacts:

Yesenia Loreda-Flores
Ramona Zaplen
Scott Gruber

Letters A – H and Numbers
Letters I – Z
General AP Inquiries and AP Checks

Vendor's Offer (Form 201-B)

"Return this Section with your Response"

Offeror must complete, sign and submit an original of this form to the Procurement Office with the proposal response. An unsigned "Vendor's Offer", late proposal response, and/or a materially incomplete response will be considered nonresponsive and rejected. Offeror is to type or legibly write in ink all information required below.

Company Name:	MISCO water		
Company Purchase Order Mailing Address:	4670 S Ash Ave, Suite 103,		
Street Address:	_____		
City, State, Zip:	Tempe, AZ, 85282		
Contact Person:	Stefan Oreshkov	Phone Number:	480-940-6923
E-mail Address:	soreshkov@miscowater.com	Cell Number:	480-415-7846
<u>Remit to Information</u>			
Company Name (as it appears on invoice):	MISCOWater		
Company Payment Remit to Address:	_____		
Street Address:	27101 Burbank Suite B		
City, State, Zip:	Foothill Ranch, CA 92610		
<u>Company Tax Information</u>			
If a Tempe-based firm, provide Tempe Transaction Privilege (Sales) Tax No.:	07647718-M		
<u>Payment Options</u>			
Will your company accept the City's Master Card for payment?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Will your company accept Payment via ACH (Automated Clearing House) for payment?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	

THIS PROPOSAL IS OFFERED BY

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor's Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected



Signature of Authorized Offeror

6 March 2020

Date

DAVID J. REDMAN

Print or Type Name of Authorized Individual

Office Manager

Title of Authorized Individual

Anti-Discrimination Policy



COMPLIANCE WITH CITY'S ANTIDISCRIMINATION ORDINANCE NO. 02016.25

The Tempe City Council approved Ordinance No. 02016.25 that requires vendors who are being recommended for award to provide evidence of their compliance with the City's antidiscrimination policy as shown below:

Sec. 2-601. Policy.

It is declared to be the policy for the citizens of Tempe, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, gender, gender identify, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, in places of public accommodation, employment, and housing; and contrary to the policy of the city and unlawful for vendors and contractors doing business with the city to discriminate, as set forth in this article.

Sec. 2-603. Unlawful Practices.

The following shall constitute a violation of this article:

For a city vendor or city contractor, because of race, color, gender, gender identify, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges or employment. City vendors and contractors of fifteen (15) or more employees shall provide a copy of its antidiscrimination policy to the Procurement Officer to confirm compliance with this article. Employers having fourteen (14) or less employees may attest in writing to compliance with this article.

Vendor Requirements

Vendors who have fifteen (15) or more employees shall include with their bid/proposal submittal a copy of its antidiscrimination policy that must mirror the City's policy as stated above. Suppliers who have fourteen (14) or less employees may include their antidiscrimination policy or complete a written affidavit of compliance per the attached.

To be completed by responding company and returned with submittal:

Our company has 15 or more employees and has included its antidiscrimination policy that mirrors the City's policy;

Our company has fourteen (14) or less employees and is attaching the signed AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE CHAPTER 2 ARTICLE VIII SECTION 2-603(5).

Please include this document along with the company's antidiscrimination policy or the completed affidavit with offer submittal

Anti-Discrimination Policy



Only complete this document if you have 14 or less employees.

AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE CHAPTER 2 ARTICLE VIII SECTION 2-603(5)

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors shall provide a copy of their antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

Current copy of antidiscrimination policy attached

OR

I hereby certify MISCOwater (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5).

Signature

Date: 6 March 2020

David J Redman
Print Name

Office Manager
Title

MISCOwater
Company

Checklist for Submittal

The following checklist has been provided to assist you in submission of your offer.

This list should not be considered complete, other information or documents may be necessary as part of your submission.

The items listed are the primary documents and information that must be completed and/or included with your proposal.

Please include any additional information or documents that will clarify your submittal.

This document has been issued in Word format to allow the responding firm the ability to provide requested information, answer questions and provide pricing within the actual document.

Offerors are reminded that the Evaluation Committee's ability to evaluate the proposal is dependent upon the organization, detail and readability of the submittal documents. A clear, complete, and adequate response is very important.

Submittal Requirements

- One signed and complete original proposal.
- Three (3) complete hard copies of the proposal for the evaluation team.
- One (1) thumb drive with the entire proposal included.
- All submittals are to be prepared on 8 1/2" X 11" paper.
- **Bound and tabbed as follows:**

TAB NUMBER	DESCRIPTION	INCLUDED	CITY USE
1.	Vendor's Offer – Form 201-B (RFP) (second page of this RFP), has been signed and included with proposal.	✓	
2.	Addendums signed and included (if applicable).	✓	
3.	Price Sheet (Excel Spreadsheet)	✓	
4.	Questionnaire completed and included.	✓	
5.	Questionnaire supporting documentation included (if applicable). Include the Questionnaire section and number on each document.	✓	
6.	Copy of any additional agreements or documents your company requires to be signed or agreed to by the City.		
7.	Signed and completed Affidavit of Compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5) and Company's Antidiscrimination policy documents (if applicable).	✓	

Alert – If you received this solicitation via a third-party plan-holder company and did not directly download it from the City of Tempe's Procurement home page you might not have received any addendums that were published during the bidding period. To ensure you are notified of addendums it is critical that you download this solicitation from the City's web site per the below link:

<https://ww2.tempe.gov/bids/>

Package Label

Please cut out and attach the following label to the outside of your submission.

RFP # 20-094

DESCRIPTION Sludge Removal Replacement Parts

Due Date: March 4, 2020

Submitting Firm: MISCO water

When dropping off at the Procurement office, dial 8329 for assistance.

Proposal response must be in the possession of the City of Tempe Procurement Office by the stated due date and time.

US Mail parcels sent to the City of Tempe PO Box may not be delivered to the Procurement Office for 24 hours or more after receipt by the City because of internal mail processing procedures. Please keep this potential time delay in mind when **US Mail Service** is utilized.

Delivery addresses are shown below for your convenience.

If sending via US Mail:

Shireen Boone
City of Tempe
Financial Services/Procurement Office
P O Box 5002
Tempe, AZ 85280

If sending via courier, FedEx, UPS or hand delivery:

Shireen Boone
City of Tempe
Financial Services/Procurement Office
20 E Sixth St. (2nd Floor)
Tempe, AZ 85281

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TW ASSOCIATES, INC., DBA MISCOWATER**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be compensated for sludge removal parts per the City of Tempe Contract No. WUD20-094-01 Pricing Details.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Per City of Tempe Contract No. WUD20-094-01 Pricing Details.

Request for Proposal
20-094 Sludge Removal Parts
Price Sheet - ADDENDUM 2

Do not add sales tax to pricing

Line Item #	Description of Required Material	Est Qty	Part #	Unit	Unit Price	Extended Price
1.0	3 x 8 x 209.00" LG SIGMA PLUS FLIGHT (LONG)	102	W3T148776	Each	\$236.24	\$24,096.48
1.1		102		Each		\$0.00
2.0	3 x 8 x 42.00" LG SIGMA FLIGHT (CROSS)	18	W3T329973	Each	\$120.00	\$2,160.00
2.1		18		Each		\$0.00
3.0	SPACER-FLIGHT 4.81 x 6.81 2.88"	236	W2T292219	Each	\$6.75	\$1,593.00
3.1		236		Each		\$0.00
4.0	WEAR SHOE; RETURN W/LUG 3.5" X 3.5" X 0.5" X 4.50"	204	W2T119965	Each	\$22.11	\$4,510.44
4.1		204		Each		\$0.00
5.0	WEAR SHOE; CARRY; 3" X 3" X 0.5" X 5.5"	236	W2T118570	Each	\$17.94	\$4,233.84
5.1		236		Each		\$0.00
6.0	SPRKT, BLK NH78-40T, DRIVEN SPROCKET 33.25 PD KEYED, 2.44"B DEEP DISH	1	W3T307739	Each	\$2,632.45	\$2,632.45
6.1		1		Each		\$0.00
7.0	SPROCKET, HS730 12T 23.18" PD 2.44"B BLK W/KW	2	W3T379781	Each	\$1,360.46	\$2,720.92
7.1		2		Each		\$0.00
8.0	SPROCKET, NH78 40T 33.23" PD 5.44" B BLK DEEP DISH, KEYED	2	W3T367362	Each	\$2,645.43	\$5,290.86
8.1		2		Each		\$0.00
9.0	SPROCKET, HS730 9T 17.54" PD 2.44" B BLK	4	W2T313121	Each	\$1,242.54	\$4,970.16
9.1		4		Each		\$0.00
10.0	SPROCKET, HS730-12T 23.18" PD 5.44" B BLK	4	W2T319543	Each	\$1,340.54	\$5,362.16
10.1		4		Each		\$0.00
11.0	SPROCKET, HCS720/730- 17 T 16.61" PD 6.83"B BLK LOWER EFFLUENT	4	W2T313233	Each	\$1,113.02	\$4,452.08
11.1		4		Each		\$0.00
12.0	SPROCKET, HCS730- 9 T 17.54"PD 4.44"B BLK PLAIN-LOWER INFLUENT	4	W2T331765	Each	\$1,175.56	\$4,702.24
12.1		4		Each		\$0.00
13.0	SLEEVE BEARING, 4.4375 IN ID 6.83 IN OD LOWER EFFLUENT SHAFT ONLY	4	W2T319431	Each	\$350.70	\$1,402.80
13.1		4		Each		\$0.00
14.0	Sole Source - CHAIN, NON-METALLIC LOOP CHAIN-LONGITUDINAL COLLECTORS, HS730, POLY 6 IN P - 10 FEET LONG	180	W2T319512	Each	\$450.09	\$81,016.20
15.0	Sole Source - CHAIN, NON-METALLIC LOOP CHAIN-CROSS COLLECTORS, HS730, POLY 2 IN P-10 FEET LONG	16	W2T319515	Each	\$438.90	\$7,022.40
16.0	Sole Source - DRIVE CHAIN, PWR TRNSMSN;DRIVE;NH78;2.609	60	W2T119925	Each	\$43.50	\$2,610.00
17.0 A	BEARING SUB ASSY, SPLIT, CAST STEEL	2	W2T116716	Each	\$309.52	\$619.04
17.1 A		2		Each		\$0.00
17.0 B	HUB-BALL, 2.437"D, SPLIT, POLYEST, SUB W/GRS	2	W3T396126	Each	\$404.33	\$808.66

17.1B		2		Each		\$0.00
18.0	2.44" DIA. X 55" LG. 1018 CRS HEAD SHAFT W/KEYWAYS	1	W3T421963	Each	\$813.69	\$813.69
18.1		1		Each		\$0.00
19.0	CROSS COLLECTOR HEAD SHAFT SUPPORT BRACKETS	2	W3T421964	Each	\$362.50	\$725.00
19.1		2		Each		\$0.00
Total Items 1 through 19						\$161,742.42
20.0	Provide percentage off list for other like or similar sludge items/products.					10%

Applicable Tax Rate 8.1 %

Addendum to Solicitation



City Procurement Office/City of Tempo • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/procurement

Issue Date: | February 26, 2020

This addendum will modify and/or clarify:

Solicitation No.: | 20-094

and is

Addendum No.: | 3

Procurement Description: | Sludge Removal Parts (Basins 7 & 8)

The Solicitation Due Date is hereby extended to Wednesday, March 11, 2020, 3:00 P.M., MST, (Arizona time).

Questions and Answers

1. How will the City have a supplier of alternate equipment prove that it is interchangeable without modification, in addition to providing the technical analysis (specifications)?

The City plans to ask the supplier, at no cost to the City, to provide the parts specified and to come to the plant and actively demonstrate showing that the parts meet all specified dimensions and composition and will also seamlessly mesh with the City's current equipment without modification. The determination of whether or not the alternate parts meet the City's requirements will be at the sole discretion of the City.

2. At the mandatory on-site pre-proposal meeting that we attended on February 18, 2020, we noticed that there are some parts installed that could wear better if replaced with an upgraded product.

The City has eight basins total, six of which have been replaced already. So that parts may be used interchangeably between all eight basins, the City requires the parts all be fully interchangeable without upgrade.

3. Can you please provide the sign-in sheet for the companies represented at the February 18, 2020 mandatory pre-proposal conference?

Yes, this is a downloadable document with this Addendum labeled as "20-094 Addendum #3- Exhibit"

Please ensure that you sign and submit this addendum with your proposal response by the revised due date (if applicable) noted above.

The balance of the specifications and bid solicitation instructions to remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

MISCOWater
Name of Company

dredman@miscowater.com
Email Address

Tempe AZ 85282
City State Zip

David J Redman
By - Name and Title (Please Print)

480 940 6923
Telephone

[Signature]
Authorized Signature

Addendum to Solicitation



City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 360-8324 • www.tempe.gov/procurement

Issue Date: | February 24, 2020

This addendum will modify and/or clarify:

Solicitation No.: | 20-094

and is

Addendum No.: | 2

Procurement Description: | Sludge Removal Parts (Basins 7 & 8)

Questions and Answers

1. We can offer parts other than the chain, that are completely interchangeable with a different manufacturer. Will the City consider an offer that prices out all other parts except for the chain, so that the contract can be awarded to more than one contractor by line item?

As the City has other basins using the parts listed on the Price Sheet, it is imperative that any parts provided by another manufacturer are absolutely interchangeable without modification and contain no deviations in specifications from the manufactured parts listed in the Price Sheet. All Offerors, whether submitting a proposal for the manufacturer listed in the Price Sheet or an alternative, must include in their proposal under TAB 8 (see Changes to RFP below) a technical analysis specification in addition to descriptive literature (if applicable) for all parts proposed.

*If providing an offer for interchangeable parts, then enter the description, manufacturer, part number, and price under the line items ending in point 1 (eg 12.1, 13.1, 14.1 for alternative manufacturers, as opposed to 12.0, 13.0, 14.0 for listed manufacturers). The Price Sheet has been replaced by **Price Sheet – Addendum 2**.*

2. In Addendum #1, a new Special Term and Condition and Instructions term was added regarding descriptive literature. If presenting a proposal for a part manufactured by a different manufacturer than is listed on the Price Sheet, can you provide more information on the type of descriptive literature the City is looking for?

Please provide a technical analysis specification of each part proposed that is not the same manufacturer as listed in the Price Sheet. The technical analysis and descriptive literature (if applicable) to be provided under TAB 8 of the proposal. Offeror will need to add this Tab 8 to the Checklist, which is on the last page in the RFP document.

3. Line item 17 on the part list "FMC Peak CAP bearing" is the old Ductile iron bearings that Envirex updated during the last few years. They substituted that with new split cast iron body bearing and Poly balls. Can we quote the new style bearings in lieu of the old FMC Peak bearings?

The Price Sheet will be amended and replaced by Price Sheet – Addendum 2, which will update the parts, under line items 17.0 A and 17.0 B.

Changes to RFP:

1. The Price Sheet has been amended and replaced by **Price Sheet – Addendum 2**. Offerors must use the new price sheet for their proposal.
2. The Checklist in the RFP is hereby amended to include **TAB 8 – Technical Analysis and Descriptive Literature**. The checklist is to be modified by Offerors in their proposal.
3. As part of the evaluation of offers, and at any point during the contract period, the City may require that the supplier offering a part provided by a different manufacturer, will need to provide sample parts for the City to inspect and possibly test to determine if they are absolutely interchangeable without modification. The Special Terms and Conditions and Instructions shall be modified to include the following term:

Samples: Samples of parts, when requested, must be submitted within a reasonable period of time. Unless otherwise specified by the Procurement Office, samples will be furnished at no expense to the City. Samples must be identified as to supplier, manufacturer, part number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at Offeror's request and sole expense. If no instructions are received for their return, samples will be discarded thirty (30) days after award date.

4. Offeror to add to the Proposal Questionnaire contained in the RFP, and answer the following question under Evaluation Factor 3 – Methodology:
- a. **Question 6.** - If offering alternative parts from other manufacturers, provide a minimum of one reference, and preferably two or three references for government entities or large corporations, whom have purchased similar (to this RFP) parts from your manufacturer as an alternative to parts supplied by their requested manufacturer. Please provide the following:
- i. Name of government entity or company
 - ii. Contact person, address, email, and phone number
 - iii. What years the purchases were made
 - iv. Approximate value of parts purchased in total (all years)
 - v. Manufacturer of original parts
 - vi. Manufacturer of alternative parts
 - vii. Describe the process of how the replacement parts were tested and whether or not they were used. Include any obstacles that may have been presented and if/how those obstacles were remedied.

Please ensure that you sign and submit this addendum with your proposal response by the revised due date (if applicable) noted above.

The balance of the specifications and bid solicitation instructions to remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

MISCOWater
Name of Company

dredman@miscowater.com
Email Address

Tempe AZ 85282
City State Zip

David J Redman Manager
By – Name and Title (Please Print)

480 940 6923
Telephone

[Signature]
Authorized Signature

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TW ASSOCIATES, INC., DBA MISCOWATER**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be compensated for sludge removal parts per the City of Tempe Contract No. WUD20-094-01 Pricing Details.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Per City of Tempe Contract No. WUD20-094-01 Pricing Details.

Contract WUD20-094-01 Sludge Removal Parts Pricing Details

Line Item #	Description of Required Material	Estimated Qty	Part #	Unit	Unit Price
1.0	3 x 8 x 20.00" LG SIGMA PLUS FLIGHT (LONG)	102	W3T148776	Each	\$236.24
2.0	3 x 8 x 42.00" LG SIGMA FLIGHT (CROSS)	18	W3T329973	Each	\$120.00
3.0	SPACER-FLIGHT 4 81 x 6 81 2.88"	236	W2T292219	Each	\$6.75
4.0	WEAR SHOE; RETURN W/LUG 3.5" X 3.5" X 0.5" X 4.50"	204	W2T119965	Each	\$22.11
5.0	WEAR SHOE; CARRY, 3" X 3" X 0.5" X 5.5"	236	W2T118570	Each	\$17.94
6.0	SPRKL, BLK NH78-40T, DRIVEN SPROCKET 33.25 PD KEYED, 2 44"B DEEP DISH	1	W3T307739	Each	\$2,632.45
7.0	SPROCKET, HS730 12T 23.18" PD 2.44"B BLK W/KW	2	W3T379781	Each	\$1,360.46
8.0	SPROCKET, NH78 40T 33.23" PD 5.44" B BLK DEEP DISH, KEYED	2	W3T367362	Each	\$2,645.43
9.0	SPROCKET, HS730 9T 17.54" PD 2.44" B BLK	4	W2T313121	Each	\$1,242.54
10.0	SPROCKET, HS730-12T 23.18" PD 5 44" B BLK	4	W2T319543	Each	\$1,340.54
11.0	SPROCKET, HCS720/730- 17 T 16 61" PD 6.83"B BLK LOWER EFFLUENT	4	W2T313233	Each	\$1,113.02
12.0	SPROCKET, HCS730- 9 T 17.54"PD 4 44"B BLK PLAIN-LOWER INFLUENT	4	W2T331765	Each	\$1,175.56
13.0	SLEEVE BEARING, 4 4375 IN ID 6 83 IN OD LOWER EFFLUENT SHAFT ONLY	4	W2T319431	Each	\$350.70
14.0	Sole Source - CHAIN, NON-METALLIC LOOP CHAIN-LONGITUDINAL COLLECTORS, HS730. POLY 6 IN P - 10 FEET LONG	180	W2T319512	Each	\$450.09
15.0	Sole Source - CHAIN, NON-METALLIC LOOP CHAIN-CROSS COLLECTORS, HS730. POLY 2 IN P-10 FEET LONG	16	W2T319515	Each	\$438.90
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17.0 A	BEARING SUB ASSY. SPLIT, CAST STEEL	2	W2T116716	Each	\$309.52
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18.0	2 44" DIA. X 55" LG. 1018 CRS HEAD SHAFT W/KEYWAYS	1	W3T421963	Each	\$813.69
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