

**AGREEMENT FOR
VIDEO LARYNGOSCOPES**

City of Glendale Solicitation No. RFP 23-23

This Agreement for Video Laryngoscopes ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Stryker Sales, LLC, a Michigan limited liability company, authorized to do business in Arizona, (the "Contractor"), as of the _____ day of _____, 2023.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. RFP 23-23 (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Key Personnel; Sub-contractors.

- 1.1 Services. Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;
 - (2) The City must approve the designated Project Manager; and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.
 - c. Discharge, Reassign, Replacement.
 - (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.

- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 Standard. Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Contractor warrants that:

- a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

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.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$200,000, as specifically detailed in **Exhibit B** (the "Compensation").

4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.

- a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
- b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
- c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in

the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. **Billings and Payment.**

5.1 Applications.

- a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the Effective Termination date, which may not be less than 30 days following the date of delivery.

- a. Contractor will be equitably compensated for Goods or Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.
8. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
9. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
10. **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.
11. **Notices.**
 - 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.
 - 11.2 **Representatives.**
 - a. **Contractor.** Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Stryker Sales, LLC
c/o Jennifer Collins
11811 Willows Road NE
Redmond, WA 98052

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Anne Shadle
5850 W Glendale Ave.
Glendale, Arizona 85301
623-930-85031

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

- 13.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.
- 13.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 13.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.
- 13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Term.

- 14.1 **Renewals.** The term of this Agreement commences upon the effective date and continues for a one (1)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and any such price adjustment will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
- 14.2 **Extension for Procurement Process.** Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City's sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension provided under this subsection will continue under the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

15. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. Cooperative Use of Contract. This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link:
<http://www.mesaaz.gov/business/purchasing/save>

17. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- | | |
|-----------|--------------|
| Exhibit A | Project |
| Exhibit B | Compensation |

The parties enter into this Agreement as of the Effective Date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin Phelps
Its: City Manager

ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Stryker Sales, LLC,
a Michigan limited liability company

Jennifer N. Collins
By: Jennifer Collins
Its: Manager, Strategic Pricing and Contracts

EXHIBIT A
VIDEO LARYNGOSCOPES
PROJECT

Stryker Sales, LLC will provide video laryngoscopes and training as per attached specifications (ATTACHMENT 1).



**City of Glendale
Solicitation Number
RFP 23-23 /
42300028 VIDEO
LARYNGOSCOPES**

**CITY OF GLENDALE
Procurement Division
5850 West Glendale
Avenue, Suite 317
Glendale, Arizona 85301**

ATTACHMENT 1

1. INTRODUCTION

The City of Glendale, Arizona (City), is requesting proposals from qualified firms (Contractor) for the purchase, delivery of, and training on video laryngoscopes. The resulting Agreement shall provide for all materials and services in this contract. Unit pricing shall be firm including the cost of freight and all other associated direct or indirect costs, excluding taxes.

2. OBJECTIVES

The City of Glendale, Arizona, is interested in contracting with a qualified vendor for video laryngoscopes. The first evaluation process will evaluate the qualification and will result in a short list of qualified vendors. The City at that time will request a unit of the product to complete the evaluation. As part of the process, the City shall require a complete training on the use of the video laryngoscopes to a city representative(s) at no cost to the City.

3. SCOPE OF WORK

A. TECHNICAL SPECIFICATIONS / REQUIREMENTS

1. Provide both Adult and Pediatric channeled blades in incremental sizes appropriate for endotracheal intubation.
2. Blades must be durable and can be safely stored in non-temperature-controlled areas, due to the extreme heat conditions in Phoenix, Arizona.
3. Provide a charging cord for each video monitor/display, if applicable.
4. Provide one extra battery per device.
5. The video screen shall provide the following:
 - i. Reduces glare and distortion, to provide a clear image.
 - ii. A brightness level and reflective screen, to provide a clear image in full
6. Include with your submittal a brochure/pamphlet on the unit being offered.

B. TRAINING

1. At least four training sessions will be provided by the resultant Contractor
 - i. At least one training session will be held on-site and in person.
 - ii. The date and time shall be agreed upon by the City and the Contractor.
 - iii. The four training sessions shall be at no additional cost to the City.
2. The City may request additional training sessions on-site
3. The Offeror shall provide instructors with expertise and knowledge in all products provided



**City of Glendale
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4. OTHER REQUIREMENTS

- A. The City will request a sample product from those vendors who make the shortlist after the initial evaluation has been completed. All vendors will be notified accordingly.
- B. Each vendors product on the shortlist will be evaluated by multiple sworn fire department paramedics.
- C. Each shortlisted vendor will provide one training session, on the unit provided for evaluation, to a city representative(s).

5. WARRANTY AND SERVICES

- A. The Contractor shall provide a minimum one-year warranty, at no additional cost to the City
- B. The Contractor shall provide diagnostic consultation to troubleshoot any maintenance needs.
- C. Provide OEM repair or replacement warranty
- D. Provide comparable loaner equipment during repair periods, at no additional cost to the City.
- E. Provide all required software and appropriate upgrades at no additional cost to the City.

6. PRODUCT DISCONTINUANCE

If a product or model is discontinued by the manufacturer, the City, at its sole discretion, may allow the Contractor to provide a substitute for a discontinued item. The Contractor shall request permission by the City to substitute a new product or model and provide all the following:

- A. A formal announcement that the product or model has been discontinued
- B. Documentation that names the replacement product or model
- C. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the function or uses of the discontinued product or model; and
- D. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

7. DAMAGE TO PRODUCTS

If there is visible damage to product(s) upon arrival, the City shall refuse receipt of delivery. Vendor shall communicate with Fire Department the plan within 24 hours to replace damaged product(s) at no additional cost to the City.



CITY OF GLENDALE TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. Contractor shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify, and hold harmless the City from all such claims.

2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. No such approval will be construed as making the City a party of or to such subcontract or subjecting the City to liability of any kind to any subcontractor. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein. No subcontract shall, under any circumstances, relieve the contractor of liability and obligation under this contract; and despite any such subletting the City shall deal through the Contractor.

3. **ASSIGNMENT.** This Agreement may not be assigned, either in whole or in part, without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right, at its option, to terminate the Agreement. Notwithstanding, Contractor may assign to a wholly owned subsidiary without consent.

4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.



CITY OF GLENDALE TERMS AND CONDITIONS

5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or materials will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME IS OF THE ESSENCE.** Contractor shall supply the units within 15 weeks after issuance of purchase order.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.



CITY OF GLENDALE TERMS AND CONDITIONS

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the “Contractor Immigration Warranty”).
 - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
 - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans’ status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive



CITY OF GLENDALE TERMS AND CONDITIONS

orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and any other applicable non-discrimination laws and rules.

- e. **No Boycott of Israel.** To the extent A.R.S. § 35-393 through 393.03, are applicable, the parties hereby certify that they are not currently engaged in and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as defined in A.R.S § 35-393.

10. **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.

11. **AMOUNTS DUE TO THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

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

13. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 et seq.) and any



CITY OF GLENDALE TERMS AND CONDITIONS

documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Glendale Procurement Policy & Procedures Section 703-3 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
14. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years or as required by Federal law, whichever is longer, after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
 15. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
 16. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and



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(iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

17. **DEFAULT.**

- a. A party will be in default of the Agreement if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the 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 notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non- defaulting party to the election of remedies specific to the party as set forth in section 20 below.
- d. **Anticipatory Repudiation.** 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.



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In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 20(a) below.

18. **PAYMENT TERMS.** If payment terms are not indicated, terms of NET 30 days shall be applied by the City. Payment terms to apply after receipt of invoice or final acceptance of the products/services, whichever is later. Payment terms offering less than 20 days for payment will not be considered. Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received. The City will not honor any invoices or claims which are tendered one (1) year after the last item on the account accrued.
19. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
 - a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
20. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.



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21. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 24 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
22. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
23. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
24. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
25. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
26. **INSURANCE.**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, sub-consultants, its agents, representatives, or employees.



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SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits of \$1,000,000 per occurrence, \$2,000,000 Aggregate. The insurance required to be maintained by Consultant shall not limit or restrict Consultant’s liability arising under or in connection with this Agreement, as set forth in the indemnification provisions in this Agreement.
2. Automobile Liability: covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with a combined single limit of \$1,000,000 per accident for bodily injury and property damage. The insurance required to be maintained by Consultant shall not limit or restrict Consultant’s liability arising under or in connection with this Agreement, as set forth in the indemnification provisions in this Agreement.
3. Workers’ Compensation insurance as required by the State of Arizona, with Statutory Limits and Employer’s Liability Insurance with limit of \$1,000,000 per accident for bodily injury or employee and policy limit for disease. (Not required if consultant provides written verification it has no employees.) The insurance required to be maintained by Consultant shall not limit or restrict Consultant’s liability arising under or in connection with this Agreement, as set forth in the indemnification provisions in this Agreement.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit of \$2,000,000 per occurrence or claim, \$4,000,000 aggregate. If the policy provided is on a claims-made basis, the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after the completion of contract work. The insurance required to be maintained by Consultant shall not limit or restrict Consultant’s liability arising under or in connection with this Agreement, as set for in the indemnifications provisions in this Agreement.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following



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provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be included as additional insureds on the automobile policy with respect to the City's vicarious liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

Except with respect to any claims or loss that arise from the negligence or willful misconduct of the City, the Consultant's required insurance coverage (except Workers' Compensation) shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it

Notice of Cancellation

Consultant shall provide for at least thirty (30) days' advance notice to City if insurance coverage is to be non-renewed, cancelled or materially modified in some way so as to not provide the same required coverages or limits of insurance as cited above.

Waiver of Subrogation

With respect to Consultant's Workers' Compensation and Employer's Liability and Automobile Liability policies, Consultant hereby grants to City a waiver of right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of loss covered under such insurance related to this agreement. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Blanket endorsements are acceptable

Acceptability of Insurers

Insurers must be authorized to conduct business in the State of Arizona as authorized by the Department of Insurance. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the City. Notwithstanding any other insurance requirements within this Agreement to the contrary, to the extent allowed by applicable law or regulation, Contractor shall be permitted to maintain a program of self-insurance to comply with the insurance requirements within this Agreement.

Verification of Coverage

Consultant shall furnish the City with original certificates and. Blanket



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endorsements are acceptable. All certificates and copies of endorsements are to be received and approved by the City's contact before work commences. DO NOT SEND CERTIFICATES TO RISK MANAGEMENT. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. In the event that City has a reasonable expectation of defense and/or indemnification with respect to a third-party claim under the terms of this Agreement and the Contractor or its insurer declines to accept City's tender of such claim, Contractor shall furnish copies of the relevant insurance policy(ies) at City's request.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

City reserves the right, with Contractor's written consent, which will not be unreasonably withheld, to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

27. **INDEMNIFICATION; LIABILITY.**

- a. Contractor agrees to indemnify and defend City from any third-party claims related to bodily injury or damage to personal property which City may suffer solely as a result of (i) a defect in workmanship or design of the Products or (ii) the negligence or willful misconduct or violation of applicable law by Contractor, its employees and authorized agents in their performance under this Agreement. This indemnification does not apply to liability and/or damages arising from: (a) the negligence of any person other than an employee or agent of Contractor; (b) the failure of any person other than an employee or agent of Contractor to follow any labeling, manuals and/or instructions for use of the Product; or (c) the use of any product not purchased from Contractor, or Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Contractor.
28. Contractor warrants that (i) Contractor has good title to Products shipped directly to City, free of all liens, claims and encumbrances; (ii) the Products will, at the time of manufacture, in all material respects have been manufactured in conformance with the Product specifications; and (iii) the Products will in all material respects, at the time of shipment, meet the technical specifications set forth in the FDA-approved or cleared labeling. EXCEPT AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE PRODUCTS INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



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29. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
30. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
31. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
32. **USE OF NAME.** Contractor will not use the name of the City of Glendale in any advertising or publicity without obtaining the prior written consent of the City.
33. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
34. **FOB DESTINATION FREIGHT PREPAID AND ADDED TO THE INVOICE.** All deliveries will be FOB destination, freight prepaid and added to the invoice.
35. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
36. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage



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or loss to City real or personal property when such property is the responsibility of or in the custody of Contractor or its personnel.

37. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided, and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
38. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the warranty in section 36, Contractor will without limitation and at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a United States patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years.
39. **CONTRACT ADMINISTRATION.** The contract will be administered by the applicable Procurement Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
40. **SAFETY DATA SHEETS.** Contractor is to supply Safety Data Sheets (S.D.S.) in accordance with Federal requirements. Contractor entering the City workplace with hazardous materials will supply the City with S.D.S. covering those particular products the contractor may expose City employees or the general public to while working at the site.
41. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including global supply chain shortages, acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will, within five (5) calendar days of the unforeseeable circumstance, notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all



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reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

- a. Force majeure shall not include the following circumstances:
 - i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
 - ii. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - iii. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance bonds, licenses, or permits.

42. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
43. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
44. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
45. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
46. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this



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Agreement is a part of this Agreement as if fully stated herein.

47. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
48. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
49. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes, if applicable.
50. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
51. **LIENS.** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or his subcontractors in the performance of the work required under his contract. Contractor shall provide written certification that all liens against materials have been satisfied upon request.
52. **PCI DSS Compliance.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City’s and/or any customer’s credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.
53. **Counterpart.** Contract may be executed in one or more counterparts, and each executed counterpart will possess the full force and effect of the original.



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EXHIBIT 1: SPECIAL NOTICES

By signing on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offerors are certifying that they understand the following notices and agree to comply with all required terms and conditions.

A. **RETURN OF OFFER The Offeror shall submit the Response Workbook electronically in Vendor Self Service (VSS)**

Offeror is required to register in VSS prior to submitting a proposal if they have not already registered.

<https://glendaleazvendors.munisselfservice.com/Vendors/default.aspx>

Guide to Register as a new vendor:

https://www.glendaleaz.com/your_government/city_finances/procurement/vendor_self_service_v_s_s (This is a PDF document “Vendor Registration Instructions” at the bottom of page.)

1. The Offeror shall complete all sections of the solicitation in the format given and the spaces provided. Proposals that do not conform to the above format may be rejected.
2. The Offeror shall bear all costs associated with submitting the proposal, including proposal preparation, site visitation or any travel connected with submission of the proposal. The City shall have no liability whatsoever for such costs.

B. **NO CONTACT, NO INFLUENCE DURING THE RFP PROCESS**

The City is conducting a competitive RFP process for the contract, free from improper influence or lobbying. There shall be no contact concerning this RFP from Offerors submitting a Proposal with any member of the City Council, RFP Evaluation Committee Members, or anyone connected with the process for or on behalf of the City. Contact includes direct or indirect contact by the Offeror, its employees, attorneys, lobbyists, surrogates, etc. in an attempt to influence the RFP process.

From the time the RFP is issued until the expiration of the protest period or the resolution of any protest, whichever is later (the “Silent Period”), Offerors, directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee (other than Procurement employees); the use of any media for the purpose of influencing the outcome; or in any other way that could be construed to influence any part of the decision-making process about this RFP. This provision shall not prohibit an Offeror from petitioning an elected official or engaging in any other protected first amendment activity after the protest period has run or any protest has been resolved, whichever is later.

Violation of this provision will cause the proposal or offer of the Offeror to be found in violation and to be rejected.



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- C. **CONFLICT OF INTEREST** Contractor shall disclose the following: 1) the name(s) and position(s) of each Contractor's employee or subcontractor that participated in the preparation of the submittal or who will be involved, directly or indirectly, with performing the contract, if awarded; 2) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 1; 3) the name(s) and position(s) of Contractor's personnel that have a financial or proprietary interest in the contract; 4) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 3.

Providing such disclosure will not necessarily disqualify a Contractor. Failure to disclose the requested information or any potential conflict of interest pursuant to A.R.S. § 38-511 et seq. may result in rejection of the proposal or bid or any contract being void or terminated.

For purposes of this provision, the following definitions apply:

"Employee" means all persons who are employed on a full-time, part-time or contract basis by the City of Glendale.

"Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

- D. **INQUIRIES** Any question related to the Request for Proposal shall be directed to the Contract Analyst whose name appears above. An Offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, no later than **FIVE days** prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such; otherwise, it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.
- E. **SPECIAL TERMS AND CONDITIONS** Additional terms and conditions specific to the provision of the services referenced will be negotiated with the successful Offer for inclusion in the contract.
- F. **PUBLIC RECORD REQUIREMENTS** Offeror acknowledges that the City is a public agency and must comply with all Public Records laws and proposals submitted become the property of the City and are subject to public disclosure requirements in accordance with Arizona Public Records Law. Any portion of the proposal that the offeror deems confidential or proprietary must be clearly labeled as such. Labeling material does not automatically preclude the material from public disclosure, as the City is required to make an appropriate determination as to the



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confidentiality of the material in accordance with Arizona Public Records Law. It is the offeror's sole responsibility and cost to take action, including legal actions, to protect such material. Price is not confidential and will not be withheld

- G. **PERMITS AND LICENSES** It is the offeror's sole responsibility to determine and secure any and all licenses and permits the contractor needs to operate the facility, from any regulatory body having jurisdiction related to the services being provided. Such costs are the exclusive responsibility of the operator, operator must also ensure appropriate licensing of any sub-contractors, operator shall notify the City in writing within two (2) working days of any suspension, revocation or renewal.
- H. **NO COLLUSION OR ANTI-COMPETITIVE PRACTICES** The submission of the offer did not involve collusion, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition or other anti-competitive practices.
- I. **NON-DISCRIMINATION** Contractor agrees not to 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.
- J. **NO CONSIDERATIONS** The Contractor 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, meal or service to a public servant in connection with the submitted offer.
- K. **AUTHORIZED AGENT** The individual signing the submittal is an authorized agent and has the authority to bind the Offeror to the proposal and subsequent contract if awarded.
- L. **KEY PERSONNEL** If awarded, Offeror shall assign a specific individual as the key point of contact for the management of the contract, subject to specific notification requirements to be included in the final contract.
- M. **SITE INSPECTION** It is the responsibility of the Offeror to become familiar with any conditions which may affect the performance and cost of providing the service and this submission will serve as evidence that the Offeror did, in fact, make a site inspection and is aware of all conditions.



CITY OF GLENDALE TERMS AND CONDITIONS

EXHIBIT 2: SPECIAL TERMS AND CONDITIONS

By signing on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offerors are certifying that they understand the following notices and agree to comply with all required terms and conditions as redlined and submitted at time of bid. The following terms are found on the City's Website and are applicable to Request for Proposal:

<https://www.glendaleaz.com/common/pages/DisplayFile.aspx?itemId=18075866>

Standard Terms and Conditions – Revised 10/13/2021

- A. **TYPE OF AWARDS** The City reserves the right to make multiple awards or to award by individual line items, by group of line items, or to make an aggregate award, whichever is deemed most advantageous to the City. If the City determines that an aggregate award to one offeror is not in the City's best interest, "all or none" offers shall be rejected.
- B. **ALTERNATE OFFERS** Offers submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the offer. If no exceptions are taken, City will expect and require complete compliance with the specifications and all Conditions of Purchase.
- C. **EFFECTIVE PERIOD OF OFFER** Offers shall be valid for a minimum of 120 days following the deadline for submitting offers. If an award is not made during that period, all offers shall be automatically extended for another 120 days. Offers will be automatically renewed until such time as either an award is made, or proper Notice is given to the Procurement Officer of Offeror's intent to withdraw its offer. Offers may only be withdrawn by submitting Notice at least 15 days before the expiration of the then current 120-day period.
- D. **PAYMENT TERMS** If payment terms are not indicated, terms of NET 30 days shall be applied by the City. Payment terms to apply after receipt of invoice or final acceptance of the products/services, whichever is later. Payment terms offering less than 20 days for payment will not be considered.
- E. **UNIT PRICE TO PREVAIL** In the event of a price disparity between the unit and extended price, the unit price shall prevail unless judged obviously in error by the City.
- F. **OFFER ERRORS OMISSIONS AND CORRECTIONS** The City will not be responsible for any offeror errors or omissions. All prices and notations shall be written in ink or typed. Changes or corrections made on the offer form must be initialed in ink by the individual signing the offer. No corrections will be permitted after the offers have been opened.



CITY OF GLENDALE TERMS AND CONDITIONS

- G. **BRAND NAME REFERENCES AND TECHNICAL SPECIFICATIONS** Brand names or manufacturer's references shall be construed as a quality or performance level and does not indicate the item cited is mandatory. Technical specifications define the acceptable standard.
- H. **RESTRICTIVE OFFER PROVISIONS** If specifications preclude an otherwise qualified offeror from submitting an offer, a written request for modification must be received by the Buyer at least seven (7) calendar days prior to the proposal due date. All offerors will be notified by a written addendum to the solicitation of any approved changes.
- I. **DEFAULT** In case of default by the contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond; or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- J. **TERMINATION FOR CONVENIENCE** The City reserves the right to terminate any order or contract upon thirty days written notice. The City will be responsible only for those standard items which have been delivered and accepted. Title to all materials, work-in-process, and completed but undelivered goods will pass to the City after costs are claimed and allowed.
- K. **SUB-CONTRACTING** The contract or any portion thereof, shall not be sub-contracted without the prior written approval of the Materials Manager. No such approval will be construed as making the City a party of or to such sub-contract or subjecting the City to liability of any kind to any sub-contractor. No sub-contract shall, under any circumstances, relieve the contractor of liability and obligation under this contract; and despite any such subletting the City shall deal through the contractor. Sub-contractors will be dealt with as workmen and representatives of the contractor.
- L. **SAFETY DATA SHEETS (SDS).** Contractor is to supply SDS) in accordance with Federal requirements for The Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Contractor entering the City workplace with hazardous materials will supply the City with a Safety Data Sheets (SDS) covering those particular products the contractor may expose City employees or the general public to while working at the site.
- M. **RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS** The offeror's products, services, and facilities shall be in full compliance with all applicable Federal, State, and local health, environmental, and safety laws, regulations, standards, and ordinances, regardless of whether or not they are referred to by the City.



CITY OF GLENDALE TERMS AND CONDITIONS

- N. **RESPONSIBILITY FOR CORRECTION** It is agreed that the offeror shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of a call back, Offeror agrees to give the City first priority. Offeror agrees that if the product or service offered does not comply with the written specification, the Materials Manager has the right to cancel the sale at any time with full refund within thirty (30) calendar days after notice of noncompliance and offeror further agrees to be fully responsible for any consequential damages suffered by the City.
- O. **REJECTION OF OFFERS** The City reserves the right to reject any or all offers, or any part thereof; to accept any offer or any part thereof; or to waive any informalities when it is deemed to be in the City's best interest.
- P. **DELAY IN EXERCISING CONTRACT REMEDY** Failure or delay by the City to exercise any right, power, or privilege shall not be deemed a waiver thereof.
- Q. **TAX EXEMPTION** The City is exempt from paying Federal Excise Taxes and will furnish an exemption certificate upon request.
- R. **ORDER OF PRECEDENCE** In the event of conflict, the following precedence shall prevail: (1) Special Terms and Conditions incorporated by attachment; (2) Special Terms and Conditions; (3) Drawings and Specifications; (4) referenced documents; and (5) the Standard Terms and Conditions.
- S. **CHANGES** The City reserves the right to make changes in any of the following: (a) specifications; (b) methods of shipment; (c) place of delivery; (d) time of delivery; (e) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty days from receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless in writing and approved by the Materials Manager prior to the institution of the change.
- T. **PRICE ADJUSTMENTS** Price adjustments shall be addressed a minimum of sixty (60) days prior to the contract renewal date, shall be in writing and include supportive justification for the proposed increase. Supportive justification means that the request shall include detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect price of the item concerned. The rate increase shall only be considered at time of contract extension. The City will review the request and shall determine if the increase shall be granted or if an alternate option is in the best interest of the City. The price increase adjustment, if approved, will be effective and executed via a contract amendment. Notwithstanding, if the Agreement is for more than 1 year, Contractor may increase pricing in accordance with CPI.



CITY OF GLENDALE TERMS AND CONDITIONS

- U. **LATE SUBMISSION OF CLAIM** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- V. **PROTEST OF AWARD** Any person who has an objection to the awarding of a solicitation by the City, pursuant to competitive solicitation procedures, shall lodge that protest, in writing, with the Materials Manager. The protest should specifically identify the objection to the award, pursuant to the formal purchase procedure. The protest must be submitted no later than seven (7) calendar days after the notice of intent to award is posted on the City's Procurement Internet home page at https://www.glendaleaz.com/your_government/city_finances/procurement/notice_of_intent_to_award. Untimely protests will not be considered.
- W. **REMEDIES** City shall have, in addition to the remedies provided herein, all remedies afforded by the Uniform Commercial Code as adopted by the State of Arizona. Contractor shall have, subject to the limitation imposed by the terms of this agreement, all remedies afforded by the Uniform Commercial Code as adopted by the State of Arizona.
- X. **ASSIGNMENT** Neither an order nor monies due thereunder shall be assigned in whole or in part without the City's prior written consent.
- Y. **ADDENDA** Any change to the proposal will be in the form of a numbered addendum issued by the Procurement Division. The addendum will be furnished to all who received the proposal. The City will not be responsible for any oral or written instructions made by any employees, officers, contracted consultant or agent of the City in regard to the proposal. The City will not be responsible for offerors adjusting their offer based on oral or written instructions.
- Z. **SPECIAL ACCOMMODATIONS** Please contact Procurement at 930-2862 at least 3 days prior to the meeting for special accommodation. Hearing impaired persons, please use the Arizona Relay Service (1-800-367-8939).
- AA. **OFFER IDENTIFICATION** The City is not responsible for the pre-opening of, post-opening of, or the failure to open, an offer not properly addressed or identified.
- BB. **OFFER TABULATION** An electronic copy of the scoring may be requested by e-mailing the Procurement office at procurement@glendaleaz.com and referencing the proposal title and number. The information will be available for distribution when the City has completed its evaluation process of the offers received.
- CC. **OSHA GUIDELINES** The contractor shall be familiar with and operate within the guidelines set forth by the Occupational Safety and Health Act.



CITY OF GLENDALE TERMS AND CONDITIONS

- DD. **PATENTS** Seller agrees to defend City at seller's own expense, in all suits, actions, or proceedings in which City is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from City's use of the goods purchased as a result of this RFP. Seller further agrees to pay and discharge any and all judgments or decrees, which may be rendered in any such suit, action or proceedings against City. Seller agrees to indemnify and hold harmless the City from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of City's purchase and use of goods supplied by the seller. It is expressly agreed by seller, that these covenants are irrevocable and perpetual.
- EE. **VENDOR PERFORMANCE** Prior offeror performance in regard to product, service, or representation of/from the offeror may be used in evaluation of this offer. Unsatisfactory performance to the City may be considered sufficient grounds for rejection of this offer. No offer will be awarded to any offeror who is in default on any contract with the City.
- FF. **PERFORMANCE SURETY REQUIREMENTS** The performance sureties shall be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. Letters of credit are not acceptable. Individual sureties are not acceptable.

PERFORMANCE SURETY The successful proposer shall, at the time of entering into the contract, furnish a performance surety in the form of a bond, money order or certified or cashier's check, in the amount of 10 percent of the contract amount guaranteeing the faithful performance of the contract by the proposer.

If a bond is submitted, it shall be written on the form provided by the City as an attachment to the proposal documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a surety with a Best Rating no less than an A and must be authorized and licensed to do business in this State by the Arizona Department of Insurance. Individual sureties and letters of credit are not acceptable.

- GG. **FUND APPROPRIATION CONTINGENCY** The contractor and the City recognize that the continuation of any contract after the close of any given fiscal year of the City; which ends on June 30, shall be subject to the approval of the budget of the City providing the contract item is an expenditure therein. The City does not guarantee that the budget item will be actually adopted, as it is the determination of the City Council at the time of the adoption of the budget.
- HH. **NOTIFICATION OF AWARD** The successful offeror(s) will be notified that their offer has been accepted by the City Council as recommended for award.



CITY OF GLENDALE TERMS AND CONDITIONS

- II. **NON-EXCLUSIVITY** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are included in this Agreement.
- JJ. **COOPERATIVE USE OF CONTRACT** This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: <http://www.mesaaz.gov/business/purchasing/save>
- KK. **PROHIBITIONS** - Contractor, and on behalf any subcontractor, certifies, to the extent applicable under A.R.S. §§ 35-391 *et seq* and 35-393 *et seq*, that neither has "scrutinized" business operations, as defined in the proceeding statutes, in the countries of Sudan or Iran.
- LL. **IMMIGRATION LAW COMPLIANCE** Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program. Any breach of warranty described above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement. City of Glendale ("City") retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty described above. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty described above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section. Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City. Contractor's warranty and obligations under this Section I to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.



CITY OF GLENDALE TERMS AND CONDITIONS

MM. **CONTRACT ADMINISTRATOR** The staff member identified as the Contract Administrator for a solicitation serves as the liaison between Procurement, the city and the successful contractor. The Contract Administrator manages the contract, overseeing the daily operations, scheduling, performance and compliance of the agreement by all parties. The Contract Administrator is responsible for:

1. Establishing and maintaining records and documentation
2. Monitoring the contractor's performance
3. Handling issues and disputes
4. Exercising extension options
5. Initiating contract modifications
6. Initiating rebids or new solicitations

NN. **FORCE MAJEURE**

1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the part 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; strikes; mobilization; labor disputes; civil disorders, fire; flood; lockouts; injunctions-interventions-acts; or failures or refusals 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.
2. Force majeure shall not include the following circumstances:
 - i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
 - ii. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - iii. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.





12.15.22 Glendale Fire Quote McGrath Laryngoscopes

Quote Number: 10624272

Version: 1

Prepared For: CITY OF GLENDALE FIRE DEPT

Attn:

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep: Patricia Monaco

Email: trish.monaco@stryker.com

Phone Number: 9175971332

Quote Date: 12/21/2022

Expiration Date: 03/21/2023

Contact your local Sales Representative for more information about our flexible payment options.

Capital Terms and Conditions:

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html. A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at <https://www.strykeremergencycare.com/terms>.

Limited warranty

Emergency care products

Subject to the limitations and exclusions set forth below, Stryker Medical, a division of Stryker Sales, LLC (“Stryker”), warrants the following products which are purchased from Stryker or authorized resellers for use in the United States of America to be free from manufacturing and material defects under normal service and use for the time periods indicated below. Limited warranty time limits begin on the date of delivery to the first purchaser.*

| 15 years | |
|---|--|
| <ul style="list-style-type: none"> Evacuation chair | |
| 8 years | |
| <ul style="list-style-type: none"> LIFEPAK® CR2 defibrillator | <ul style="list-style-type: none"> HeartSine® samaritan® PAD automated external defibrillator |
| 7 years | |
| <ul style="list-style-type: none"> Welds on Stair-PRO® stair chair, Power-PRO™ XT powered ambulance cot, Power-LOAD® powered cot fastener system, Performance-PRO™ XT manual ambulance cot, Performance-LOAD® manual cot fastener system | |
| 5 years | |
| <ul style="list-style-type: none"> LIFEPAK 15 monitor/defibrillator, used in clinic and hospital settings exclusively (with no use in mobile applications) | <ul style="list-style-type: none"> LIFEPAK 20e defibrillator/monitor LIFEPAK 1000 defibrillator |
| 3 years | |
| <ul style="list-style-type: none"> McGRATH™ MAC EMS video laryngoscope | <ul style="list-style-type: none"> Power-PRO XT power train (includes motor pump assembly and hydraulic cylinder assembly) |
| 2 years | |
| <ul style="list-style-type: none"> Stair-PRO (parts only) Power-LOAD (parts only) Performance-PRO XT (parts only) Performance-LOAD Power-PRO XT Power-PRO IT | <ul style="list-style-type: none"> SMRT™ power charger (Power-PRO XT) CodeManagement Module® LIFEPAK CR2 Trainer LIFEPAK 1000 Trainer HeartSine samaritan Trainer HeartSine Gateway |
| 1 year | |
| <ul style="list-style-type: none"> Stair-PRO (parts and labor) Power-LOAD (parts and labor) Performance-PRO XT (parts and labor) MX-PRO® R3 x-frame ambulance cot MX-PRO bariatric transport cot Expendable components for Power-PRO and Performance-PRO XT (i.e. mattresses, restraints, IV poles, storage nets, storage pouches, oxygen straps and other soft goods) SMRT power paks LIFEPAK 15 LIFEPAK Certified Pre-Owned defibrillators | <ul style="list-style-type: none"> LUCAS® chest compression system (including the LUCAS device with upper part and back plate), carrying case, battery, stabilization strap and patient straps LIFEPAK 500T AED Training System LIFEPAK CR-T AED Training System LIFEPAK 20e internal battery system Battery charging systems and power adapters Batteries and battery paks, excluding CHARGE-PAK™ battery charger MASIMO® SET® Rainbow® reusable sensors TrueCPR® coaching device |

* First purchaser means the first purchaser or lessee of the products listed above directly from Stryker, through a Stryker corporate affiliate, or from an authorized Stryker reseller, and includes the invoiced purchaser’s corporate affiliates, and their respective employees, officers and directors.

180 days

- MASIMO cables and SET SpO₂ sensors

90 days

- CHARGE-PAK charging unit
- LIFEPAK advanced cardiac life support training devices
- Sterilizable internal paddles (one-piece design)
- Installed repair parts
- All other product accessories and disposables

30 days

- Internal paddles and paddle handles (two-piece design)

The sole and exclusive remedy for any products that become defective during this period shall be repaired or replaced, such determination being at Stryker's sole discretion. All warranties hereunder are made subject to the proper use by Customer in the application for which such Products were intended. The warranty provided hereunder does not cover any Products (i) that have been misused, subject to abuse or accident; used in contradiction with applicable operating instructions, or used outside of the product's intended environment or setting; (ii) that have been assembled, maintained, modified, refurbished or repaired by anyone other than Stryker or its authorized representatives, in any way which, in the judgment of Stryker, affects its stability and reliability (iii) that have been subjected to unusual stress or have not been properly maintained or (iv) on which any original serial numbers or other identification marks have been removed or destroyed.

Stryker, in its sole discretion, will determine whether warranty service on the product will be performed in the field or through ship-in repair. For field repair, this warranty service will be provided by Stryker at the purchaser's facility or an authorized Stryker facility during normal business hours. For ship-in repair, all products and/or assemblies requiring warranty service should be returned to a location designated by Stryker, freight prepaid, and must be accompanied by a written, detailed explanation of the claimed failure. Products repaired or replaced under this warranty retain the remainder of the warranty period of the repaired or replaced Product.

In any event, Stryker's liability shall be limited to the replacement value of any damaged or defective part. **THE EXPRESS WARRANTY SET FORTH IN THIS SECTION IS THE ONLY WARRANTY APPLICABLE TO THE PRODUCTS SOLD SUBJECT TO THIS AGREEMENT AND IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOMER OR OTHERWISE.** THIS LIMITED WARRANTY SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON. STRYKER IS NOT LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS OR PROFITS) WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

Products are warranted in conformance with applicable laws. If any part or term of this Limited Warranty is held to be illegal, unenforceable or in conflict with applicable law by any court of competent jurisdiction, the validity of the remaining portions of the Limited Warranty shall not be affected, and all rights and obligations shall be construed and enforced as if this Limited Warranty did not contain the particular part or term held to be invalid. Some geographies, including certain US states, do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This Limited Warranty gives the user specific legal rights. The user may also have other rights which vary from state to state.

TO OBTAIN PARTS AND SERVICE

Stryker products are supported by a nationwide network of dedicated Stryker Field Service Representatives. These representatives are factory trained, available locally, and carry a substantial spare parts inventory to minimize repair time. Simply call your local representative, or call Stryker Customer Service USA at 1-800-327-0770.

RETURN AUTHORIZATION

Merchandise cannot be returned without approval from the Stryker Customer Service Department. An authorization number will be provided which must be printed on the returned merchandise. Stryker reserves the right to charge shipping and restocking fees on returned items. Special, modified, or discontinued items not subject to return.

DAMAGED MERCHANDISE

ICC Regulations require that claims for damaged merchandise must be made with the carrier within fifteen (15) days of receipt of merchandise. Do not accept damaged shipments unless such damage is noted on the delivery receipt at the time of receipt. Upon prompt notification, Stryker will file a freight claim with the appropriate carrier for damages incurred. Claim will be limited in amount to the actual replacement cost. In the event that this information is not received by Stryker within the fifteen (15) day period following the delivery of the merchandise, or the damage was not noted on the delivery receipt at the time of receipt, the customer will be responsible for payment of the original invoice in full. Claims for any short shipment must be made within thirty (30) days of invoice.

INTERNATIONAL WARRANTY CLAUSE

This warranty reflects U.S. domestic policy. Warranties outside the U.S. may vary by country. Please contact your local Stryker representative for additional information.

For further information, please contact Stryker at 800.442.1142 (U.S.), or visit our website at strykeremergencycare.com

Emergency Care

Products may not be available in all markets because product availability is subject to the regulatory and/or medical practices in individual markets. Please contact your representative if you have questions about the availability of Stryker's products in your area. Stryker or its affiliated entities own, use, or have applied for the following trademarks or service marks: CHARGE-PAK, CodeManagement Module, HeartSine, LIFEPAK, LUCAS, MX-PRO, Performance-LOAD, Performance-PRO, Power-LOAD, Power-PRO, samaritan, SMRT, Stair-PRO, Stryker, TrueCPR. Masimo, the Radical logo, Rainbow and SET are registered trademarks of Masimo Corporation. All other trademarks are trademarks of their respective owners or holders.

The absence of a product, feature, or service name, or logo from this list does not constitute a waiver of Stryker's trademark or other intellectual property rights concerning that name or logo.

GDR 3345508_B
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Physio-Control, Inc.
11811 Willows Road NE
Redmond, WA 98052
Toll free 800 442 1142
strykeremergencycare.com



Jolife AB
Scheelevägen 17
Ideon Science Park
SE-223 70 Lund
Sweden



Stryker
3800 E. Centre Avenue
Portage, MI 49002 U.S.A.
Toll free 800 784 4336
stryker.com



HeartSine Technologies Ltd.
207 Airport Road West
Belfast, BT3 9ED
Northern Ireland
United Kingdom

EXHIBIT B
VIDEO LARYNGOSCOPES
COMPENSATION

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$200,000.

DETAILED PROJECT COMPENSATION

See Contractor's Pricing Page (ATTACHMENT 2).

ATTACHMENT 2
VIDEO LARYNGOSCOPES
PROJECT

PRICING:

Equipment Products:

| # | Product | Description | Qty | Sell Price |
|----------|----------------|--|------------|-------------------|
| 1.0 | 301-000-000 | LARYNGOSCOPE, VIDEO, MCGRATH MAC A03 | 1 | \$2,682.29 |
| 2.0 | 340-000-000 | LARYNGOSCOPE, BATTERY, MCGRATH 3.6V GRAY | 1 | \$61.15 |
| 3.0 | X3-003-000 | LARYNGOSCOPE, BLADES, X3, BOX OF 10 | 1 | \$283.51 |
| 4.0 | 350-082-000 | LARYNGOSCOPE, BLADES, MAC 1, BOX OF 10 | 1 | \$162.14 |
| 5.0 | 350-084-000 | LARYNGOSCOPE, BLADES, MAC 2, BOX OF 10 | 1 | \$162.14 |
| 6.0 | 350-086-000 | LARYNGOSCOPE, BLADES, MAC 3, BOX OF 10 | 1 | \$162.14 |
| 7.0 | 350-088-000 | LARYNGOSCOPE, BLADES, MAC 4, BOX OF 10 | 1 | \$162.14 |

Freight/Shipping:

\$73.28

Sales Rep: Patricia Monaco, trish.monaco@stryker.com
917-597-1332