

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LZ DELTA, LLC DBA GO AZ MOTORCYCLES**

This Linking Agreement (“Agreement”) is entered into as of this _____ day of _____, 2024, between the City of Glendale, an Arizona municipal corporation (“City”), and LZ Delta, LLC dba GO AZ Motorcycles, an Arizona limited liability company, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On June 16, 2023, the State of Arizona-ADOT, entered into a contract with Contractor to purchase the goods and services described in Motorcycles, Side by Side Vehicles and ATV Quad Bikes Contract No. CTR066077 (“Cooperative Agreement”), which is attached hereto as **Exhibit A**. The Cooperative Agreement allows its cooperative use by other governmental agencies, including the City.
- B. Section 2-149 of the City’s Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City wishes to contract with Contractor for supplies or services identical to those being provided to other units of government under the Cooperative Agreement. Contractor consents to the City’s cooperative use of the terms and conditions of the Cooperative Agreement, and agrees to provide the supplies and services set forth in the Statement of Work appended hereto as **Exhibit B**.

AGREEMENT

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

1. Term of Agreement.

- A. As provided in the Cooperative Agreement, purchases can be made by governmental entities from its effective date, which was June 16, 2023, until the date the contract terminates on June 15, 2024, unless the term is extended by mutual agreement of the parties to the Cooperative Agreement. The Cooperative Agreement, however, may not be extended beyond June 15, 2028. The initial period of this Agreement is the period from the Effective Date of this Agreement until June 15, 2024.
- B. The City may extend the term of this Agreement for four (4) one-year periods if the Cooperative Agreement is likewise extended and the City gives the Contractor notice that it is exercising its option to extend at least 30 days prior to the anniversary of the Effective

Date. Glendale extensions are not automatic and shall only occur if the City affirmatively exercises its right to extend this Agreement.

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

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

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as **Exhibit C**.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed one million three hundred thousand dollars (\$1,300,000) for the entire term of the Agreement (initial term plus any extensions).

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

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

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

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

8. No Boycott of Israel. 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.

9. Uyghur Forced Labor Prevention Act (UFLPA). Contractor certifies that it does not currently, and during the term of this Agreement, will not use:

- a. the forced labor of ethnic Uyghurs in the People's Republic of China;
- b. any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and
- c. any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

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. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Craig Croner
6210 W. Myrtle Avenue, #111
Glendale, AZ 85301

and

LZ Delta, LLC dba GO AZ Motorcycles
c/o Jay Tucker
15500 N. Hayden Road
Scottsdale, AZ 85260

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

"City"

"Contractor"

City of Glendale, an Arizona
municipal corporation

LZ Delta, LLC, dba GO AZ Motorcycles,
an Arizona limited liability company

By: _____
Kevin R. Phelps
City Manager

By:  _____
Name: Jay Tucker
Title: Parts/Service Director

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LZ DELTA, LLC DBA GO AZ MOTORCYCLES**

**EXHIBIT A
STATE OF ARIZONA-ADOT
CONTRACT NO CTR066077
MOTORCYCLES, SIDE BY SIDE VEHICLES AND ATV QUAD BIKES**



OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

LZ Delta, LLC
 Offeror (Company) Name

15500 N Hayden Rd.
 Address

Scottsdale AZ 85260
 City State Zip

jtucker@goaz.com
 Email Address

invoice@goaz.com
 Company Email Address


 Signature of Person Authorized to Sign Offer

Jay Tucker 4/14/2023
 Printed Name Date

Parts / Service Director
 Title

480-398-2545
 Phone Number

480-750-4944
 Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR066077 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 16 day of June 2023

DocuSigned by:
Pamela Vent 6/8/2023
 Procurement Officer Awarded Date

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LZ DELTA, LLC DBA GO AZ MOTORCYCLES**

**EXHIBIT B
Scope of Work**

For the purchase of law enforcement motorcycles and miscellaneous motorized vehicles.



Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1655 W. Jackson St., MD 100P
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM005245

DESCRIPTION: Motorcycles, Side by Side vehicles and ATV Quad Bikes

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov/>) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Tom Kornell
Senior Procurement Officer
Phone: 602-712-8520
Email: TKornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	8
Uniform Terms and Conditions	19
 <u>EXHIBITS</u>	
1 - Title VI/Non-Discrimination Assurances Appendix A	35
2 - Title VI/Non-Discrimination Assurances Appendix E	36
3 - Usage Report	37

1. Statement of Need

- 1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Motorcycles, Side by Side vehicles and ATV Quad Bikes

2. Introduction and Background

- 2.1. The State of Arizona Department of Transportation (Department) is seeking to contract with qualified vendors who can provide Motorcycles, Side by Side vehicles and ATV Quad Bikes for the State of Arizona and all participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, off highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.
- 2.2. The State and its Eligible Agencies currently spend an estimated one million dollars in the purchase for Motorcycles, Side by Side vehicles and ATV Quad Bikes annually.

3. General Requirements

- 3.1. The following are the Categories covered in the Scope of Work:

- *Category One (1): Motorcycles* is defined as in this scope of work as a motorized vehicle for one or two passengers with two inline wheels.
- *Category Two (2): Side by side vehicles* is defined as in this scope of work as an all terrain vehicle that is able to position passengers side by side and or front to back and built with storage space and enclosed roll cage structure.
- *Category Three (3): ATV Quad Bikes* is defined as in this scope of work as All-terrain vehicle that travels on low pressure tires, has a seat that is straddled by the operator and has handlebars.

- 3.1.1. Each of the categories listed above may be offered to the eligible agency by phase classification. Below is the definition of each phase:

- **Phase One (1)** Off-the-Manufacturing-Line: The contractor may offer categories 1-3 for this phase as listed in the pricing sheet.
 - **Phase Two (2)** On-the-Contractors-Lot: The contractor may offer categories 1-3 for this phase as listed in the pricing sheet.
- 3.2 No other items may be purchased or offered under this scope of work that are currently offered under another statewide contract or that do not specifically match the three categories called out in section 3.1. listed above.

4. Specific Requirements

- 4.1. Eligible Agencies throughout the State will have varying vehicle needs.
- 4.2. All equipment supplied under this contract shall be new and should be supplied with all accessories indicated as standard equipment in the manufacturer's published literature (or website).
- 4.3. The following fuel types are allowable under this contract. To include but not limited to:
 - 4.3.1. Gasoline
 - 4.3.2. Diesel
 - 4.3.3. Hybrid-Electric Vehicles (HEV)
 - 4.3.4. Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)
- 4.4. All Motorcycles, Side by Side vehicles and ATV Quad Bikes ordered through Phase 1 (off the line / manufacture) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the Contractor before delivery and ready in all respects for use.
- 4.5. Motorcycles, Side by Side vehicles and ATV Quad Bikes ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles, and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.
- 4.6. All Motorcycles, Side by Side vehicles and ATV Quad Bikes shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 4.7. The Contractor shall supply a quote/estimate within ten (10) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information:
 - State contract number
 - Vehicle availability and delivery lead-time
 - Vehicle Manufacture Suggested Retail Price (MSRP) price and discount applied
 - Itemized options
 - Additional Fees /Charges (i.e. destination, transfer or import fees)
 - Applicable tax
 - Delivery cost
 - Total price
 - Point of contact

For Motorcycles, Side by Side vehicles and ATV Quad Bikes requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

SCOPE OF WORK

- 4.8. Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 180 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Pricing Sheet.
- 4.9. All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 4.10. The following documents shall be provided upon delivery of the vehicle(s):
- 4.10.1.1. M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
 - 4.10.1.2. Warranty Document
 - 4.10.1.3. Manufacturers unaltered invoice
 - 4.10.1.4. Delayed warranty / in service start request form (if requested by ordering entity)
- 4.11. Contractors are to provide a full line of manufactured new Motorcycles, Side by Side vehicles and ATV Quad Bikes and all subsequent variants of each Motorcycles, Side by Side vehicles and ATV Quad Bikes; including: all models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.
- 4.12. **Motorcycles, Side by Side vehicles and ATV Quad Bikes Up-fit / Modifications**
- 4.12.1. The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any Motorcycles, Side by Side vehicles and ATV Quad Bikes including both interior and exterior to meet specific organizational needs.
 - 4.12.2. The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.
- 4.13. **Service Requirements: The contractor may offer Service and or Repairs under this contract. The following requirements apply:**
- 4.13.1.1. **Labor Rates:** Labor rates for any labor levels that may be applicable to the service being offered shall be in accordance with the pricing sheet.
 - 4.13.1.2. Labor rates and labor hours must be itemized on the estimate and invoice to the eligible agency. If the Contractor's software limits itemized information, the Contractor must list the breakdown in the narrative on the estimate and invoice.
- 4.13.2. **Shop Supplies:** Shop Supplies shall not exceed 5% of the total labor cost and will not exceed a total of \$150.00 per job.

- 4.13.3. Certifications/Safety Standards/Regulations:** The Contractor shall provide all necessary parts, supplies and labor necessary to perform repairs and shall meet or exceed all manufacture's recommendations and standards. Repair services shall be performed in conformance with all provisions of this contract, legal statutes, code requirements, industry standards and applicable OEM specifications.
- 4.13.3.1. All work under this category shall be performed by qualified personnel. Qualified personnel must have the training and certification required to perform the work according to all applicable federal, state and local rules and regulations. The Contractor shall perform all services in a safe manner for means, methods, techniques, procedures and safety precautions.
- 4.13.3.2. The Contractors shall insure that all work will be professionally diagnosed, and that repairs will be performed by factory trained and/or certified mechanics, i.e. certified from the National Institute for Automotive Service Excellence (ASE). Contractor personnel shall possess all required licenses and certifications to perform these services. It is the Contractors responsibility to insure safety standards are met and all Contractors personnel certifications are current.
- 4.13.3.3. The Contractor shall comply with all applicable laws and regulations including but not limited to the following:
- 4.13.3.3.1. Occupational Safety and Health Administration (OSHA)
 - 4.13.3.3.2. All local, county, state and national laws and regulations
 - 4.13.3.3.3. National Fire Protection Association (NFPA) requirements
 - 4.13.3.3.4. Code of Federal Regulation (CFR) under Tittle 49;
 - 4.13.3.3.5. Federal Motor Carrier Safety Administration (FMCSA) Inspection, Repair, and Maintenance within Part 396,
 - 4.13.3.3.6. (FMCSA) Parts & Accessories Necessary for Safe Operation within Part 393,
 - 4.13.3.3.7. (FMCSA) Safety Standards within Part 571,
 - 4.13.3.3.8. The Society of Automotive Engineer (SAE) standards
- 4.13.4. Parts used in the service or repair:** When labor and repair with non-OEM/aftermarket parts are provided, the following is applicable:
- 4.13.4.1. The Contractor shall only use non-OEM/aftermarket parts when OEM parts are unavailable and approved by the Eligible agency.
- 4.13.4.2. The Contractor shall not sell non-OEM/aftermarket parts directly to the eligible agency. The parts must only be used in a service/repair service.
- 4.13.4.3. Pricing for all parts shall be in accordance to the pricing sheet.

5. Contractor's Responsibilities

- 5.1. Contractor shall be responsible for processing the registration, licensing, title and plating of all new Motorcycles, Side by Side vehicles and ATV Quad Bikes ordered, only if requested by the Eligible Agency.
- 5.2. The Contractor shall include delivery at no cost to the eligible agencies within the same county as the contractor resides. The contractor may include a delivery fee for any county outside of the dealer's county. Any delivery fees shall be a flat rate charge per county and indicated on pricing form attachment.

6. Department's Responsibilities

- 6.1. The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered in a timely manner not to exceed 10 calendar days.
- 6.2. The Eligible Agency will be responsible for any destination fees as applicable. Any additional fees shall receive prior approval from the eligible agency within 10 days of the received quotation or estimate. All fees are to be billed as quoted; any changes at the time of shipment will require an additional written approval from the Eligible Agency.

SPECIAL TERMS AND CONDITIONS

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by A.R.S. §41-2632. This cooperative purchasing agreement must be in effect at the time of order. The Contractor shall verify if an ordering entity is an eligible cooperative purchasing member before selling materials to or providing services for them under the contract. The current list of cooperative purchasing members is available on the State Procurement Office website at <https://spo.az.gov/suppliers/usage-reporting>.

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under Section 501(c)(3) through 501(c)(6) of the tax code.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

Eligible Agencies shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for an Eligible Agency to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

Contractor shall acknowledge each order from Eligible Agencies in conformance with each agency's instructions given at the time of ordering. Orders from eligible cooperative purchasing members create no obligation on State's part. Notwithstanding, the Contractor shall fulfill orders under the Contract to any Eligible Agency. The Contractor's refusal to do so would be a material breach of the Contract.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Delivery of the equipment will be an optional item to the eligible agencies. The eligible agency may have the option to pick up equipment at the eligible agencies own expense.

Deliveries shall be completed In accordance with the requirements of the contract.

Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number

SPECIAL TERMS AND CONDITIONS

- Invoice Number and Date
- Date the items were shipped to the Department
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased
- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes
- Applicable Shipping/Freight Charges
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICE REDUCTION

1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.

- a. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.
- b. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be clearly identified and justified. 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 the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.
2. That all items furnished hereunder shall conform to the requirements of this contract and shall be free from defects in design materials and workmanship. Any defects of design, workmanship or materials shall be fully corrected by the Contractor (including parts and labor) without cost to the Department.
3. The warranty period on workmanship and materials shall be based on a minimum of twelve (12) months from the time of acceptance by the Department.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.
2. Documentation from the manufacturer that names the replacement product or model.
3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

- a. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1655 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

- b. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile.

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

21.1 Insurance Requirements

21.1.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the

SPECIAL TERMS AND CONDITIONS

performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

21.1.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.2 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

21.2.1 Commercial General Liability (CGL) – Occurrence Form Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.2.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non owned automobiles used in the performance of this Contract.

• Combined Single Limit (CSL)	\$1,000,000
-------------------------------	-------------

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.2.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
 - Employers' Liability
 - o Each Accident \$1,000,000
 - o Disease – Each Employee \$1,000,000
 - o Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.3 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

21.3.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E). 23.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

21.4 Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

21.5 Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.6 Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.6.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.6.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract. 23.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.7 Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.8 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.9 Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. ADMINISTRATIVE FEE

The Contractor shall pay the State an administrative fee against all Contract sales to eligible cooperative purchasing members, as provided for under A.R.S. § 41-2633. The fee for services provided under this Contract is one (1%) percent.

23. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to Eligible Agencies, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to Eligible Agencies. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. SERIAL NUMBERS

Equipment supplied under this contract must contain an original manufacturer's serial number. Serial number may not be altered in any way. Throughout the contract term, the Department reserves the right to reject any altered equipment.

26. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted

pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

27. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1. **“Attachment”** means any item the Solicitation which requires the Offeror to submit as part of the Offer.
 - 1.2. **“Contract”** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4. **“Contractor”** means any person who has a Contract with the State.
 - 1.5. **“Data”** means recorded information, regardless of form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - 1.6. **“Days”** means calendar days unless otherwise specified.
 - 1.7. **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
 - 1.8. **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.9. **“Materials”** means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.10. **“Procurement Officer”** means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.11. **“Services”** means the furnishing of labor, time or effort by a Contractor or Subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

- 1.12. "State" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
- 1.13. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.14. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials or any Services required for the performance of the Contract.
- 1.15. "Subcontractor" means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits; then
 - 2.3.7. Any other documents referenced or included in the Solicitation including, but not limited to, any Bid or Offer documents provided by the Contractor that do not fall into one of the above categories.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

- 2.6. **No Parol Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. **Records.** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. **Non-Discrimination.** The Contractor shall comply with State Executive Order No. 2009-09 and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. **Audit.** Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. **Facilities Inspection and Materials Testing.** The Contractor agrees to permit access to its facilities, Subcontractor facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or Materials covered under this Contract as required under A.R.S. § 41-2547. The State shall also have the right to test, at its own cost, the Materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. **Notices.** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice

shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Continuous Improvement. Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. Ownership of Intellectual Property
- 3.9.1. Rights In Work Product. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- 3.9.2. "Government Purpose Rights" are:
- 3.9.2.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;

- 3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and
- 3.9.2.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
- 3.9.3. “Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.
- 3.9.4. Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
- 3.9.5. Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
 - 3.9.5.1. any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;
 - 3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and
 - 3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing Materials.
- 3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.
- 3.10. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials are the sole property of the State. The Contractor is not entitled to a patent or

copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

- 3.11. Federal Immigration and Nationality Act. Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, Contractor shall flow down this requirement to all Subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default and suspension or debarment of the contractor.
- 3.12. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.
- 3.13. Offshore Performance of Work involving Data is Prohibited. Any Services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to Data shall be performed within the defined territories of the United States.
- 3.14. Certifications Required by State Law.
- 3.14.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.
- 3.14.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. ("free on board") Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.

4.4. Applicable Taxes

4.4.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.4.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.4.3. Tax Indemnification. Contractor and all Subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.4.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.5. Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current State Fiscal Year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current State Fiscal Year until funds are made available for performance of this Contract.

4.6. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these Materials or Services are not funded, the State may take any of the following actions:

4.6.1. Accept a decrease in price offered by the Contractor;

4.6.2. Cancel the Contract; or

4.6.3. Cancel the Contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of Services or Materials, the revision of payment terms, or the substitution of Services or Materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer as described in Arizona State Procurement Office Standard Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss. The Contractor shall bear all loss of conforming Materials covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming Materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or Subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or

Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of Materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this paragraph shall not apply.

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither the Contractor nor State 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 party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, 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.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment, Materials, or Services caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. 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

6.4.2.3. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either the Contractor or State is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or Services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in the Special Terms and Conditions, the Contractor warrants that, for one (1) year after acceptance by the State of the Materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the Materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged, and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Conformity to Requirements.

- 7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:
- 7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;
 - 7.3.1.2. Be free from defects of material and workmanship;
 - 7.3.1.3. Conform to or perform in a manner consistent with current industry standards; and
 - 7.3.1.4. Be fit for the intended purpose or use described in the Contract.
- 7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.
- 7.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.
- 7.5. Contractor Personnel. Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.6. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.

- 7.7. Intellectual Property. Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.8. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. Operational Continuity. Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [Assignment and Delegation] that expressly recognizes the event.
- 7.10. Performance in Public Health Emergency. Contractor warrants that it will:
- 7.10.1. Have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
 - 7.10.1.1. Identification of response personnel by name;
 - 7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and
 - 7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.
 - 7.10.2. Provide a copy of its current plan to State within three (3) business days after State's written request. If Contractor claims relief under paragraph 6.4 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.
 - 7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.
 - 7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.
- 7.11. Lobbying

- 7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
- 7.11.2. Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.
- 7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.
- 7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- 7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.
- 7.15. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

7.15.2. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12- 529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.15.3. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or Services supplied under this Contract shall fully comply with the Contract. The delivery of Materials or Services or a portion of the Materials or Services

that do not fully comply constitutes a breach of contract. On delivery of nonconforming Materials or Services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State with the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify

all Subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, Data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and Materials or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring Materials or Services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (A.R.S. Title 41).

EXHIBIT 1
Title VI/Non-Discrimination Assurances
Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration*, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 2 Title VI/Non-Discrimination Assurances Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*)

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LZ DELTA, LLC DBA GO AZ MOTORCYCLES**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be paid within 30 days of submission of its invoices to City at the rates attached hereto.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Statement of Work must not exceed \$1,300,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

For the purchase of law enforcement motorcycles and miscellaneous motorized vehicles.

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 1: Motorcycles

Instructions: The basis for pricing shall be fixed discount(s) off Manufacturers Suggested Retail Price (MSRP). The discount offers shall clearly identify the percent of discount to apply to the contract category. Proposed products shall be for Motorcycles in current production and marketed to the general public and education/government agencies at the time the proposal is submitted. For each manufacturer and/or product line offered, include at minimum, manufacturer's name, model or classification and percent off of MSRP for each phase.

Phase One (1) off the Line pricing

Manufacturer/Model/Classification	Percent Off of MSRP
BMW	1
Harley-Davidson (Excludes Live wire)	6
Triumph	2
Indian	2
Honda	5
Kawasaki	5
Zero	2
Husqvarna	2
KTM	2
Ducati	2
Moto Guzzi	2
Polaris Slingshot	2
Royal Enfield	2
Suzuki	2
Yamaha	5
Piaggio / Vespa / Aprilia	2
Stark	2
Livewire	2

Phase Two (2) off the Lot Pricing

Manufacturer/Model/Classification	Percent Off of MSRP
BMW	1
Harley-Davidson	6
Triumph	2
Indian	2
Honda	5
Kawasaki	5
Zero	1
Husqvarna	2
KTM	2
Ducati	2
Moto Guzzi	2
Polaris Slingshot	2
Royal Enfield	2
Suzuki	2
Yamaha	5
Piaggio / Vespa / Aprilia	2
Stark	2
Livewire	2

Locations carried: (For delivery charge calculation)

- Scottsdale, Peoria
- Harley-Davidson of Scottsdale
- Scottsdale, Peoria, Prescott Valley
- Scottsdale
- Flagstaff, Prescott Valley, Scottsdale
- Flagstaff, Prescott Valley, Scottsdale, Cottonwood
- Scottsdale, Peoria
- Scottsdale
- Scottsdale, Peoria, Prescott Valley
- Scottsdale, Peoria
- Peoria
- Scottsdale
- Scottsdale, Peoria, Cottonwood
- Flagstaff, Prescott Valley
- Flagstaff, Payson
- Scottsdale, Peoria
- Scottsdale
- Harley-Davidson of Scottsdale

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 2: Side by Side

Instructions: The basis for pricing shall be fixed discount(s) off Manufacturers Suggested Retail Price (MSRP). The discount offers shall clearly identify the percent of discount to apply to the contract category. Proposed products shall be for Side by Side in current production and marketed to the general public and education/government agencies at the time the proposal is submitted. For each manufacturer and/or product line offered, include at minimum, manufacturer's name, model or classification and percent off of MSRP for each phase.

Phase One (1) off the Line pricing

Manufacturer/Model/Classification	Percent Off of MSRP
Honda (700cc or under)	3
Honda (Over 700cc)	5
Kawasaki MULE SX	5
All other Kawasaki Side x Side	10
Yamaha	5
Polaris Ranger (570cc or smaller)	5
Polaris Ranger (over 570cc, excl Northstar)	7
Polaris Ranger Northstar models (HVAC)	1
Polaris Ranger XP Kinetic (Electric)	2
Polaris General 1000 (Non-XP)	7
Polaris General XP 1000	5
Polaris Rzr	7
Can-Am Defender Limited (HVAC)	1
All other Can-Am Side x Sides	6
SSR Motorsports	3

Phase Two (2) off the Lot Pricing

Manufacturer/Model/Classification	Percent Off of MSRP
Honda (700cc or under)	1
Honda (Over 700cc)	1
Kawasaki MULE SX	3
All other Kawasaki Side x Side	8
Yamaha	3
Polaris Ranger (570cc or smaller)	4
Polaris Ranger (over 570cc, excl Northstar)	5
Polaris Ranger Northstar models (HVAC)	0
Polaris Ranger XP Kinetic (Electric)	0
Polaris General 1000 (Non-XP)	5
Polaris General XP 1000	3
Polaris Rzr	5
Can-Am Defender Limited (HVAC)	0
All other Can-Am Side x Sides	3
SSR Motorsports	3

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 3: Quad Bikes

Instructions: The basis for pricing shall be fixed discount(s) off Manufacturers Suggested Retail Price (MSRP). The discount offers shall clearly identify the percent of discount to apply to the contract category. Proposed products shall be for Quad Bikes in current production and marketed to the general public and education/government agencies at the time the proposal is submitted. For each manufacturer and/or product line offered, include at minimum, manufacturer's name, model or classification and percent off of MSRP for each phase.

Phase One (1) off the Line pricing

Manufacturer/Model/Classification	Percent Off of MSRP
Honda (250cc or under)	2
Honda (Over 250cc)	5
Kawasaki (300cc or under)	2
Kawasaki (Over 300cc)	5
Polaris	5
Can-Am (BRP)	5
Suzuki	5
Yamaha	5

Phase Two (2) off the Lot Pricing

Manufacturer/Model/Classification	Percent Off of MSRP
Honda (250cc or under)	2
Honda (Over 250cc)	5
Kawasaki (300cc or under)	2
Kawasaki (Over 300cc)	5
Polaris	5
Can-Am (BRP)	5
Suzuki	5
Yamaha	5

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 4: Labor Rates

Instructions: The Contractor shall provide labor rates for any labor levels that may be applicable to the service being offered. This may include after-hours, field service, holidays or weekends etc. Any labor rates for this category shall be listed to include modification, service and repairs. The Base Labor Rate will be used for evaluation purposes. Below indicate labor rates as required in paragraph 4.12 and 4.13 in the Scope of Work.

Phase One (1) off the Line pricing

Labor Rate(s)	Per Hour
Base Labor Rate	116.25

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 5: Parts for Repair or Modifications

Instructions: The Contractor shall provide parts at a discounted rate that may be used in a service, repair or an upfit/modification job at the contractor's facility per section 4.12 and 4.13 of the Scope of Work. The Contractor shall list any classification of parts that may be applicable to the service being offered and the location of the list or catalog and the minimum discount offered for the parts offered.

Manufacturer/Classification	Percent Off List Price	Manufacturer/Catalog/List Location
FMS Accessories (BMW Authority Parts)	3	https://fmsaccessories.com/
BMW Authority-specific options (Code3 Lighting etc..)	3	CODE3 / through BMW dealer
Genuine BMW Parts & Accessories	14	http://bmw.goaz.com
Triumph	2	https://www.triumphmotorcycles.com/
Indian	2	https://www.indianmotorcycle.com/
Honda	10	https://powersports.honda.com/
Kawasaki	10	https://www.kawasaki.com/en-us/
Zero	5	https://zeromotorcycles.com/leet-police-security
Husqvarna	2	https://www.husqvarna-motorcycles.com/
KTM	2	https://www.ktm.com/en-us.html
Ducati	2	https://www.ducati.com/us/en/home
Moto Guzzi	2	https://www.motoguzzi.com/us_EN/
Polaris	10	https://www.polaris.com/en-us/
Can-Am (BRP)	10	https://can-am.brp.com/
Suzuki	5	https://store.suzukicycles.com/
Yamaha	5	https://www.yamahamotorsports.com/
Piaggio / Vespa / Aprilia	2	https://www.piaggio.com/us_EN/
Royal Enfield	2	https://www.royal.enfield.com/us/en
SSR Motorsports	2	http://www.ssrmotorsports.com/
PVP Communications	0	https://www.pvpcom.com/
Setcom	0	https://setcomcorp.com/
Kustom Signal	0	https://kustomsignals.com/
Stalker Radar	2	https://www.stalkerradar.com/
B&B Enterprises	3	https://bbenenterprisesinc.com/
Shoel Helmets	15	https://shoel-helmets.com/
HJC Helmets	15	https://www.hjchelmets.com/
Tomar	3	https://tomar.com/
Michelin Tires	25	https://www.michelinman.com/
Dunlop Tires	25	https://www.dunlopmotorcycletires.com/
Bridgestone Tires	25	https://www.bridgestonemotorcycletires.com/
Metzeler Tires	25	https://www.metzeler.com/
Harley-Davidson Genuine Parts	10	https://www.harley-davidson.com/us/en/shop/c/motorcycle-parts
Whelen	5	https://www.whelen.com/
Sound off Signal	5	https://soundoffsignal.com/
Non-OEM (Aftermarket) Parts / Accessories	10	www.goaz.com

PRICING SHEET

Motorcycles, Side by Side vehicles and ATV Quad Bikes

OFFEROR: LZ Delta, LLC

Category 6: Delivery Costs

Instruction; The Contractor may offer a flat rate fee for any county that the contractor does not reside in per section 5.2 in the Scope of Work. Any delivery fees associated with all other counties shall be listed below. Please note/mark zero (0) on contractors residing county. All additional delivery fees shall be listed as a flat rate charge.

County	Delivery charge (Flat rate)
From Scottsdale or Peoria locations:	
Apache	500
Cochise	400
Coconino	350
Gila	250
Graham	400
Greenlee	500
La Paz	350
Maricopa	0
Mohave	350
Navajo	350
Pima	250
Pinal	150
Santa Cruz	400
Yavapai	150
Yuma	500

County	Delivery charge (Flat rate)
From Cottonwood or Prescott Valley:	
Apache	500
Cochise	400
Coconino	250
Gila	250
Graham	400
Greenlee	500
La Paz	400
Maricopa	150
Mohave	250
Navajo	250
Pima	350
Pinal	250
Santa Cruz	500
Yavapai	0
Yuma	500

County	Delivery charge (Flat rate)
From Flagstaff Location:	
Apache	400
Cochise	300
Coconino	0
Gila	350
Graham	500
Greenlee	600
La Paz	450
Maricopa	350
Mohave	250
Navajo	250
Pima	350
Pinal	250
Santa Cruz	500
Yavapai	250
Yuma	500

County	Delivery charge (Flat rate)
From Payson Location:	
Apache	500
Cochise	500
Coconino	350
Gila	0
Graham	350
Greenlee	500
La Paz	450
Maricopa	250
Mohave	350
Navajo	500
Pima	350
Pinal	250
Santa Cruz	400
Yavapai	250
Yuma	500