

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND**

D&H UNITED FUELING SOLUTIONS, INC, DBA COCHISE FUELING SOLUTIONS

This Linking Agreement (“Agreement”) is entered into as of this _____ day of _____, 2025, between the City of Glendale, an Arizona municipal corporation (“City”), and D&H United Fueling Solutions, Inc, dba Cochise Fueling Solutions, a Delaware corporation, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On January 28, 2025, the State of Arizona-ADOT, entered into a contract with Contractor to purchase the goods and services described in Installation, Repair and Maintenance of Fuel Tank Systems Contract No. CTR075545 (“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 Finance Director 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 Finance Director 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 the date of award, which is May 1, 2025, until the date the contract terminates on April 30, 2026, unless the term is extended by mutual agreement of the parties to the Cooperative Agreement. The Cooperative Agreement, however, may not be extended beyond April 30, 2030. The initial period of this Agreement begins May 1, 2025 and continues until April 30, 2026.
 - 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 this Agreement 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 five hundred thousand dollars (\$500,000) 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 Sandy Ressler, Fleet Management
6210 W. Myrtle Avenue
Glendale, AZ 85301

and

D&H United Fueling Solutions, Inc, dba Cochise Fueling Solutions
c/o Jack O'Halloran
333 N. Black Canyon Hwy
Phoenix, AZ 85009

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

"City"

City of Glendale, an Arizona
municipal corporation

By:

Kevin R. Phelps
City Manager

"Contractor"

D&H United Fueling Solutions, Inc,
dba Cochise Fueling Solutions
a Delaware corporation

By:

Jack O'Halloran
Name: Jack O'Halloran
Title: Service Manager

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
D & H UNITED FUELING SOLUTIONS, INC, DBA COCHISE FUELING SOLUTIONS**

**EXHIBIT A
STATE OF ARIZONA-ADOT
CONTRACT NO. CTR075545
INSTALLATION, REPAIR AND MAINTENANCE OF FUEL TANK SYSTEMS**



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.

COCHISE FUELING SOLUTIONS
Offeror (Company) Name

333 N. BLACK CANYON HWY
Address

PHOENIX AZ 85009
City State Zip

johnloran@DH-UNITED.COM
Email Address

AZSERVICE@DH-UNITED.COM
Company Email Address

Jack O'Halloran
Signature of Person Authorized to Sign Offer

JACK O'HALLORAN 12/9/24
Printed Name Date

SERVICE MANAGER
Title

602-242-8427
Phone Number

607-242-1530
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 **CTR075545** 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 1st day of May 2025

DocuSigned by:
Pamela Veal 1/28/2025

69C61CE38A6E4BB...
Procurement Officer Awarded Date

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
D & H UNITED FUELING SOLUTIONS, INC, DBA COCHISE FUELING SOLUTIONS**

**EXHIBIT B
Scope of Work**

Repair, maintenance, and testing services of the City's fuel bulk systems for Fleet Management and the Glendale Municipal Landfill, on an as-needed basis.



Procurement

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

INVITATION FOR BID

SOLICITATION NUMBER: BPM006417

DESCRIPTION: Installation, Repair and Maintenance of Fuel Tank Systems

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.

Patrick Breazeale
Procurement Officer
Phone: 602-712-8504
Email: PBreazeale@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2533 and A.A.C. R2-7-B301 et seq., Competitive Sealed Bidding.

"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) 712-7466. 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) 712-7466.

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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 Installation, Repair and Maintenance of Petroleum Storage Tank Systems (PSTS) services.

2. Introduction and Background

- 2.1. There are a number of PSTS located throughout the State of Arizona which contain petroleum that include, but are not limited to diesel, fuel oil, unleaded and oxygenated gasoline blends, and used oil. These are regulated as underground and above ground storage tank systems, under the Resource Conservation and Recovery Act, CFR Title 40, and the Uniform Fire Code.
- 2.2. The State of Arizona Department of Transportation (agency) is seeking to contract with a qualified Supplier(s) who can provide Installation, Repair and Maintenance of Fuel Tank Systems statewide for the State of Arizona and all participating Eligible Agencies. This service will be used to support official organizational goals. It is the intent of the State to have contracts in place to provide statewide coverage to all areas of the State of Arizona to maintain the safe operation of Petroleum Storage Tank Systems (PSTS) at all times.

3. General Regulatory Requirements

- 3.1. The Petroleum Storage Tank Systems (PSTS) are subject to multiple federal regulations concerning Underground Storage Tanks (UST) and used oil management regulations contained in 40 CFR Parts 279 thru 282. Depending on the size and location, some Aboveground Storage Tanks (AST) containing petroleum have to comply with the Clean Water Act Section 311 Spill Prevention, Control, and Countermeasures rule, the Occupational Safety and Health Administration's Standard 1910.110 (Storage and Handling of Liquefied Petroleum Gases) and National Fire Protection Association code 58 requirements for safe operation of propane tanks.
- 3.2. The Contractor and all work performed under this contract must comply with the current Federal, State, and Local Regulations concerning the operation and maintenance of PSTS. To include all requirements listed in this Scope of Work.
- 3.3. Pursuant to A.A.C. R18-12-801, beginning from and after December 31, 1996, a person shall not perform UST service on an UST system unless the person is certified or is supervised by a person certified under this Article. The certification requirements of this Article shall not apply to the site assessment or sampling requirements under A.A.C. Title 18, Chapter 12.
- 3.4. Cities and Counties also have regulations concerning these systems, including but not limited to air permits for dispensing gasoline.
- 3.5. Contractors and their employees shall comply with OSHA construction (1926) and general duty (1910) requirements including hazard assessment and developing a Health and Safety Plan. In addition they will need to comply with any site specific safety requirements imposed by the Facility. In addition to the above requirements the minimum level of Personal Protective

Equipment, (PPE), must include but is not limited to: full length pants, safety glasses, and leather safety toe boots.

4. Specific Requirements

4.1. Task Assignments

- 4.1.1. After receiving a Task Assignment from an Eligible Agency (Agency), the Contractor shall provide a Task Assignment response that includes a detailed proposed work plan, including the estimated work to be done. No work shall begin without approval from the Agency or Agency Representative.
- 4.1.2. After the Agency approves the Contractor's task assignment response, the Contractor shall provide the Agency with an estimated work completion date. This shall be submitted in writing and within 72 hours of receiving the Agency's approval of the task assignment.
- 4.1.3. All work shall be performed during business hours, Monday through Friday unless otherwise directed by the Agency. No work shall be performed on weekends or State Holidays without prior approval from the Agency.
- 4.1.4. After the completion of work, the Contractor shall submit an itemized statement of charges to the Agency. These charges shall conform to the contract as well as the approved task assignment. Any deviations from the proposed work shall be approved by the Agency prior to the submittal of charges. Unit Rates must conform to the pricing in the contract.

4.2. Maintenance and Repair

- 4.2.1. Maintenance and repair of the PSTS under this contract includes but is not limited to: maintenance and repair of tanks, tank liners pumps, all associated piping and appurtenances, dispensers including all hanging hardware, (hoses, nozzles, etc.), vent lines and vents, leak prevention, detection and monitoring, equipment, filters, and vapor recovery systems. Work under this contract also includes repairing any apparent problems which may cause, or may have caused leaks in the system and maintain all parts of the PSTS in good working order.
- 4.2.2. Maintenance includes performing the required manufacturer and Agency requirements for all equipment associated with the PSTS, including preventive maintenance, as approved by the State, in accordance with manufacturer and regulatory requirements.
- 4.2.3. The Contractor shall provide routine maintenance and testing in accordance with the manufacturers and regulatory requirements, as prescribed by the Agency's maintenance schedule and in receipt of a Purchase Order issued by the eligible agency. Such testing may include but is not limited to Stage I Vapor testing (unleaded tanks in Maricopa County), Precision line test, Mechanical line leak detectors and fill containment sump testing. The Contractor shall retain testing data for the life of the contract and shall provide data to the

SCOPE OF WORK

Agency as requested. The Contractor shall ensure they retain the proper testing certifications as well as manufacturer certifications.

4.2.4. The Contractor shall be able to repair above and below ground structures including, but not limited to: canopies, fuel islands, and structures located on the fuel island such as booths, ticket stands, card lock system(s) and pedestals.

4.2.5. The Contractor must have knowledge in the replacement or repair of fiberglass, single or double wall, steel and stainless steel, product lines, flex lines and repair of fiberglass reinforced plastic tanks.

4.2.6. Equipment and parts supplied by Contractor shall be consistent with the type required to perform the requirements of the scope of work and as identified in the task assignment. The Contractor shall also follow the Environmental Protection Agency (EPA) guidance on compatibility of Underground Storage Tanks (UST) and Aboveground Storage Tanks (AST) systems Compatibility with Biofuels.

4.2.7. The Contractor shall comply with all warranty requirements for repairs to manufacturer and name brand equipment.

4.2.8. The Contractor shall be able to provide repair and maintenance of automated card lock systems and Automatic Tank Gauge Systems that are associated components of the PSTS.

4.2.9. Work within this section includes removing water from the PSTS and if necessary, filtering, cleaning, and treating the fuel stored to prevent or remove microbial contamination, algae, water and sediment problems.

4.2.10. The Contractor must provide maintenance and repair of the tank, the dispenser, product lines, leak (detection/prevention) devices, replacement or repair of the dispenser. All replacement components will be new, free of defects, and Underwriters Laboratories (UL) listed.

4.2.11. The Contractor shall report any spill, confirmed or suspected leak discovered in the fuel system to the using Agency. In the case of spills over 25 gallons or spills that cannot be contained and cleaned up in a timely manner the Contractor must cease all work and immediately notify the using Agency contact and the Arizona Department of Environmental Quality contact. Notification shall be in writing. The using Agency will then be responsible for handling environmental site assessment and remediation of hazardous material or substances for any spills, as well as investigation, planning, and clean-up activities for underground and above ground petroleum storage tanks and/or delivery systems which may pose a liability to the State.

4.2.12. The Contractor shall properly dispose of all waste generated including Petroleum Contaminated Soil (PCS), solid waste, non-hazardous liquid waste, and hazardous waste. The Contractor shall be responsible for waste characterization and proper disposal of waste generated from install, maintenance and repair work, including, but not limited to

excess excavated material, non-salvageable equipment and materials, tanks, sand, liquids, fuel, sludge, clean water or cleaning solutions used in cleaning the tank. Waste material must be transported and disposed of using transporters and disposal facilities which possess all required federal, state and local licenses or permits for those substances. The Contractor shall submit manifests certifying destination, receipt, and disposal of demolition materials to the Agency upon agency request.

4.2.13. Any investigation, assessment and remediation costs will be the responsibility of the Contractor, if it is determined that the PSTS failure, spill and/or leak is due to negligence or fault on the part of the Contractor in performance under this contract.

4.2.14. As part of this contract, the Contractor will be requested to make modifications and upgrades to existing PSTS required to comply with State, County, local Municipalities and Federal requirements such as all current CFR Title 40, Fire Marshal, or other Regulatory Agency requirements. This would include but is not limited to the installation of new equipment required to meet those requirements. These modifications and upgrades will be upon request of the Agency. The Contractor shall supply the appropriate documentation for the parts and materials used upon invoicing and before payment will be made.

4.3. Installation and Repair

4.3.1. Underground Storage Tank Systems

4.3.1.1. Installation and repair of Underground Storage Tank Systems (UST) systems include but are not limited to the following: Fuel tanks, dispensers, pumps, automatic tank gauge (ATG) system, card lock systems, lighting, canopy, fuel island, asphalt and concrete repair, associated electrical work (including repair of all types of cathodic protection systems, grounding, and relevant components of the UST system). All work performed regarding UST systems shall comply with Federal and State, County and Municipal code requirements.

4.3.2. Aboveground Storage Tank Systems

4.3.2.1. Installation and repair of Aboveground Storage Tank Systems (AST) systems include but are not limited to the following: Fuel tanks, dispensers, pumps, automatic tank gauge (ATG) system, card lock systems, lighting, canopy, fuel island, asphalt and concrete repair, associated electrical work (including repair of all types of cathodic protection systems, grounding, and relevant components of the AST system). All work performed regarding AST systems shall comply with Federal and State, County and Municipal code requirements.

4.3.3. Diesel Exhaust Fluid (DEF) Storage Tank and Dispensing Systems

4.3.3.1. An Agency may request the installation of DEF systems on established fuel islands. The DEF system must tie into the existing card lock system. The Contractor

shall provide the specified DEF dispensing units, all necessary new components, and required labor to provide a fully functioning DEF system to include but are not limited to DEF tanks and DEF pumps. Installation and Repair work of the DEF systems shall be in accordance with Federal and State, County and municipal code requirements.

4.4. Repair Only

4.4.1. The Contractor must provide the following repair services in addition to those associated with the Maintenance or Installation of PSTS stated above including but not limited to the following:

4.4.1.1. PSTS General Service: which includes but is not limited to fiberglass, steel, flexible piping, fill lines, vent lines, electrical wiring and conduit, line leak detectors (i.e. Red Jacket), submersible pumps, overfill and spill prevention devices, automatic tank gauging equipment, cathodic protection devices, dispensers, leak detecting sensors (i.e. Veeder Root) and equipment, Stage I Vapor Recovery Systems, necessary signage, and manways or grade access to tank openings.

4.4.1.2. Generator Systems: This relates to the fuel components of the generator system not including the actual maintenance and repair of the generator motors themselves.

4.4.1.3. Compressed Natural Gas Fueling Systems: The contractor must be able to provide general service of all components of a compressed natural gas fueling system, excluding the vehicle. Work includes the general service and repair of compressor, dispenser, storage units, card readers, and automatic gate openers.

4.5. Suspension of Contract Work

4.5.1. The Contractor must suspend operations if weather conditions are such that work operations cannot be carried out in a safe and effective manner, or will pose an environmental hazard. If such suspension occurs, the Contractor must immediately notify the Eligible Agency.

4.5.2. An Eligible Agency may suspend work operations at any time, when in their judgment, present or impending weather conditions are such that the work cannot be carried out in a safe and effective manner.

4.5.3. An Eligible Agency must immediately suspend operations when work performance is observed in violation of safety rules, regulations or practices.

4.5.4. Violation of safety rules, regulations or practices may be considered grounds for termination of the contract.

4.6. Parts

4.6.1. Copies of the actual invoices from the supply vendor or manufacturers must be attached to the contractor's billing documentation. The eligible agency will verify these prices before issuing payment to the vendor. Markup costs may not exceed 20% to the using agency.

5. Contractor's Responsibilities

- 5.1. The Contractor shall maintain employees with the required certifications, qualifications, and registrations that are required to work with, repair, testing, maintain and install tanks, dispensers, automated tank gauge systems and all components of PSTS. Experience is required with Card lock systems (fuel control system) and Multi-force Systems.
- 5.2. The Contractor shall furnish all necessary labor, tools, equipment, and parts needed to perform the required services.
- 5.3. The Contractor shall provide a response to an Eligible Agency inquiry within 48 hours (2 business days).
- 5.4. The Contractor shall provide training to Eligible Agency personnel upon request regarding the use of any equipment and the handling of fuels or other materials contained by the systems.
- 5.5. The Contractor's vehicles and mobile equipment must be clearly marked with the company name and/or logo or the workers on site should have proper company identification. Equipment, machinery, component or system failures that affect the safe operation of any equipment must be corrected, prior to the Equipment arriving at the jobsite. The Contractor shall inspect equipment for safety prior to each use.
- 5.6. The Contractor shall possess a valid Arizona Department of Agriculture, Weights and Measures, Registered Service Agency (RSA) License and the Contractor's Technician shall possess a valid Arizona Department of Agriculture, Weights and Measures, Registered Service Representative (RSR), License.
- 5.7. The Technician shall possess a valid Installation and Retrofit Certification issued by the Arizona Department of Environmental Quality, (ADEQ). The Agency may require certification above regulatory requirements, such as a manufacturer's certification.
- 5.8. The Contractor shall comply with A.A.C. R18-221 to 271 and ensure that when decommissioning a UST, a Technician or Supervisor possessing a valid ADEQ Decommissioning certification shall be onsite during the tank removal.
- 5.9. The Contractor shall adhere to the requirements in Exhibit 5, Rules for Non-Employees of Arizona Department of Corrections (ADC) in Arizona State Prisons for requirements for locations at Arizona Department of Corrections.

6. Department's Responsibilities

- 6.1. The Eligible Agency shall have a project coordinator available when contractor is onsite to perform services.

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective date of award and shall continue for a period of twelve (12) months 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. INVOICING REQUIREMENTS

Separate invoices are required for each 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
- 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
- Attached invoices of parts purchased to complete repairs
- Monthly Preventative Maintenance checklist (if applicable)

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 within thirty (30) calendar days after acceptance of services. Delivery of the service to the Department does not constitute acceptance.

The date the Department accepts delivery of services shall 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.

7. 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.

8. PRICE REDUCTION

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

9. 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.

10. CONTRACT ADMINISTRATION

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

11. 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
1739 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.

12. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

The Contractor or any subcontractors are prohibited from having weapons in their possession or on their person within the building. Weapons shall be stored securely, consistent with A.R.S. § 13-3118, in the Contractor's or any subcontractor's vehicle if there are no storage amenities available at the ADOT facility. 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 except in the manner stated above.

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."

13. REVIEW OF CONTRACTOR'S WORK

Work performed by the Contractor shall be subject to periodic reviews and partial acceptance at various stages. The Department reserves the right to make such reviews and pass upon the acceptability of the Contractor's work. Partial acceptance shall not relieve the Contractor's obligation to correct, without charge, any errors in the work performed under this contract.

14. ACCURACY OF WORK

The Contractor shall be responsible for the accuracy of the work and shall promptly make all the necessary revisions or corrections resulting from errors and omissions on the part of the Contractor without additional compensation. Acceptance of the work by the Department shall not relieve the Contractor of the responsibility for subsequent correction of any such errors and clarification of ambiguities.

15. INDEMNIFICATION

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.

16. 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.

- 16.1 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 performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- 16.2 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.

16.3 Minimum Scope and Limits of Insurance

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

16.3.1 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.

16.3.2 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.

16.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$1,000,000
 - Disease – Each Employee \$1,000,000
 - 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).

16.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000
- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

16.4 Additional Insurance Requirements

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

- 16.4.1 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).
- 16.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

16.5 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).

16.6 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.

16.7 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.

16.7.1 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.

16.7.2 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.

16.7.3 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. The certificate shall state that the insurance applies to any and all work performed for or on the behalf of the State of Arizona/ADOT shall be noted on the certificate of insurance.

16.8 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 this contract, proof from the Contractor that its subcontractors have the required coverage.

16.9 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.

16.10 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.

17. ADMINISTRATIVE FEE

Contractor shall pay the State an administrative fee against all Contract sales to Co-op Buyers, as provided for under A.R.S. § 41-2633. The fee for goods and services provided under this contract is 1.5% percent. On January 1, 2025, the administrative fee will increase to 2%. Rates are set in accordance with State Procurement Office (SPO) Technical Bulletin (TB) 007, available on SPO's website, which may be revised at the State's sole discretion as part of Arizona state procurement policy. TB 007 may be found here: <https://spointra.az.gov/resources/procurement-regulations>. Failure to remit the administrative fees is a material breach of contract, and will entitle the State to its remedies under Uniform Terms and Conditions Section 8, State's Contractual Remedies, and its right to terminate for default under Section 9, Contract Termination. Method of fee calculation, payment procedures, and other details are provided on the State Procurement Office website: <https://spo.az.gov/>.

18. USAGE REPORT

18.1 Administrative Fee Reporting

Contractor shall submit to ADOA-SPO a Quarterly Report documenting all Contract sales to both eligible State agencies and cooperative purchasing members, itemized separately. A Quarterly Report shall be submitted even if there have been no sales. The Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other.

Quarterly reports on transactions with cooperative purchasing members are required to be filed with ADOA-SPO. Failure to remit the administrative fees/usage reports 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. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website at <https://spo.az.gov/suppliers/usage-reporting>.

18.2 ADOT Usage Report Requirements

The Contractor shall furnish ADOT a quarterly report showing all purchasing activity under this **contract**. This usage report shall be provided in a form substantially equivalent to Exhibit Z. 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

19. KEY PERSONNEL

It is essential that the Contractor provides adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

20. SUBCONTRACTORS

It is essential that the Contractor provides adequate experienced subcontractors, capable of and devoted to the successful accomplishment of work to be performed under this contract.

21. REMOVAL OF CONTRACTOR'S EMPLOYEES

The Contractor agrees to utilize only experienced, responsible and capable personnel in the performance of the work. The Department may require that the Contractor remove from the job

covered by this contract, employees who endanger persons or property or whose continued employment under the contract is inconsistent with the interest of the Department.

22. PROJECT ADMINISTRATION

The Project Manager shall be designated at the time of project assignment. The Project Manager will provide general direction as necessary and be responsible for decisions pertaining to work under this Contract.

23. CONTRACTOR SELECTION FROM MULTIPLE CONTRACTS

The Department makes no guarantee as to the amount of work to be assigned to any Contractor and may exercise its option not to utilize the services requested herein. Selection will be at the sole discretion of the Department. The Department is under no financial obligation to any selected Contractor unless the Department issues a Purchase Order for a specific requirement.

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. 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. "AI" means the science and engineering of making machines capable of performing tasks that are typically associated with human intelligence, such as learning and problem-solving, and includes without limitation: AI systems, classic AI, external AI, generative AI, and large language model (LLM) AI.
 - 1.2. "Attachment" means any item the Solicitation which requires the Offeror to submit as part of the Offer.
 - 1.3. "Contract" means the combination of the Solicitation, including the 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.
 - 1.4. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.5. "Contractor" means any person who has a Contract with the State.
 - 1.6. "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.
 - 1.7. "Days" means calendar days unless otherwise specified.
 - 1.8. "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.
 - 1.9. "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.
 - 1.10. "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.
 - 1.11. "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.

- 1.12. "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.
- 1.13. "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.
- 1.14. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.15. "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.
- 1.16. "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 Parole 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 Orders Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. Contractor shall include these provisions in contracts with Subcontractors when required by Federal or State law.
- 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. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.
- 3.15. Artificial Intelligence (AI) Prohibitions. Consistent with State policy, if Contractor supplies AI Services or Materials (either directly or through Subcontractors or the sale

of licenses), such as research, development, training, implementation, deployment, maintenance, provision, or sale of AI systems, then Contractor is prohibited from using State of Arizona Materials or Data in generative AI queries or for building or training proprietary generative AI programs unless explicitly approved in advance by the State in writing.

3.15.1. Contractor shall also disclose the utilization of generative AI before producing works owned by the State and/or integrating generative AI into Materials or Services used by the State.

3.15.2. Contractor shall perform due diligence to ensure proper licensure of model training data for all generative AI services throughout the life of the Contract.

3.16. Certifications Required by State Law.

3.16.1. 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.

3.16.2. 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 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.*).

Sample

| | |
|--|--|
| TASK ASSIGNMENT NO.: Click here to enter text. TITLE: Click here to enter text. | |
| CONTRACT INFORMATION | |
| Contractor Name: Click here to enter text. | Statewide Contract #: Click here to enter text. |
| SCOPE OF WORK | |
| Task Name: Click here to enter text. (DATES COVERED: Click here to enter text.) Click here to enter text. Include outline of Agency's responsibilities and Contractor's responsibilities. | |
| TASK NEEDS | |
| Task 1: Click here to enter text. Deliverable(s): Click here to enter text. | |
| Task 2: Click here to enter text. Deliverable(s): Click here to enter text. | |
| Task 3: Click here to enter text. Deliverable(s): Click here to enter text. | |
| Task 4: Click here to enter text. Deliverable(s): Click here to enter text. | |
| Task 5: Click here to enter text. Deliverable(s): Click here to enter text. | |
| DOCUMENTATION TO BE SUBMITTED BY CONTRACTOR WHEN SUBMITTING TASK ASSIGNMENT RESPONSE | |
| At a minimum, the following documentation is required with your task assignment response. The Project Manager will determine what additional information is needed at the time of issuing the Task Order | |
| a) Scope of Work Project Work Plan: Describe in detail the methodology and all work tasks that will be included in the project, including deliverables as well as work plan schedule. b) An itemized list of Classifications and hourly rates proposed for this task. | |

Agency Representative: [NAME]

Submission of Statement of Work Project Work Plan is due on [DUE DATE] to [AGENCY REPRESENTATIVE] at: [EMAIL]

EXHIBIT 4 ADC Prison Security Requirements

| Requirement | On-site Pre-Bid Conference | Working on New Site with or Without Inmate Workers | Working On-site Outside Secure Perimeter with or without Inmate Workers | Working On-site within Secure Perimeter with or without Inmate Workers |
|------------------------|---|---|---|---|
| Background Check | ACIC/NCIC | Required | Required | Required |
| Fingerprinting | Not Required | Required | Required | Required |
| Grooming Standards | Orange clothing prohibited | Orange clothing prohibited | Orange clothing prohibited | Orange clothing prohibited |
| Identification Cards | Department issued visitor cards required to be worn at all times | Department issued visitor cards required to be worn at all times | Department issued visitor cards required to be worn at all times | Department issued visitor cards required to be worn at all times |
| Tool Inventories | Not Applicable | Complete inventory to be maintained on site | Complete inventory to be maintained on site | Complete inventory to be maintained on site |
| Food and Beverages | No Restrictions (ASPC-T) | No Restrictions (ASPC-T) | No Restrictions (ASPC-T) | Food shall be: Wrapped and carried in clear plastic; carried through the metal detector; eaten during the work shift. Food shall not: Be disposed of on-site without prior authorization from Department staff; require refrigeration or cooking. |
| Vehicles | Vehicles shall be locked and parked only in designated areas | Vehicles shall be locked and parked only in designated areas | Vehicles shall be locked and parked only in designated areas | Vehicles shall be locked and parked only in designated areas |
| Prescription Drugs | Limited to one day supply, kept in prescription bottle | Limited to one day supply, kept in prescription bottle | Limited to one day supply, kept in prescription bottle | Limited to one day supply, kept in prescription bottle |
| Over the Counter Drugs | Limited to one day supply | Limited to one day supply | Limited to one day supply | Limited to one day supply |
| Illegal Drugs | Prohibited | Prohibited | Prohibited | Prohibited |
| Alcohol | Prohibited | Prohibited | Prohibited | Prohibited |
| Cellular Phones | Permitted in presence of Department Escort or Procurement Officer | One phone per contractor crew provided the phone number(s) is given to the designated Department staff. | One phone per contractor crew provided the phone number(s) is given to the designated Department staff. | One phone per contractor crew provided the phone number(s) is given to the designated Department staff. |
| Pagers | Permitted | Permitted | Permitted | Permitted |
| Cash Limit | \$40.00 | \$40.00 | \$40.00 | \$40.00 |
| Credit Cards | Permitted | Permitted | Permitted | Permitted |

EXHIBIT 4 ADC Prison Security Requirements

| | | | | |
|---|--|--|--|--|
| Checkbooks | Permitted | Permitted | Permitted | Permitted |
| Cameras | Permitted with procurement officer escort, use restricted to construction purposes only | Permitted with procurement officer escort, use restricted to construction purposes only | Permitted with procurement officer escort, use restricted to construction purposes only | Permitted with procurement officer escort, use restricted to construction purposes only |
| Weapons | Prohibited | Prohibited | Prohibited | Prohibited |
| Searches | Routine searches of persons, personal property, equipment and vehicles may be conducted at established checkpoints prior to and while on institution grounds | Routine searches of persons, personal property, equipment and vehicles shall be conducted at every entry/exit point and may be conducted at established checkpoints prior to entering and while on institution grounds | Routine searches of persons, personal property, equipment and vehicles shall be conducted at every entry/exit point and may be conducted at established checkpoints prior to entering and while on institution grounds | Routine searches of persons, personal property, equipment and vehicles shall be conducted at every entry/exit point and may be conducted at established checkpoints prior to entering and while on institution grounds |
| MISCELLANEOUS PERSONAL ITEMS | | | | |
| Wallet with photos, personal papers, allowable currency | Permitted | Permitted | Permitted | Permitted |
| Handkerchief/tissue | Permitted | Permitted | Permitted | Permitted |
| Hair comb/brush/pick | Permitted | Permitted | Permitted | Permitted |
| Tobacco products & smoking apparatus; limited to normal daily usage amount | Permitted | Permitted | Permitted | Permitted |
| Keys as necessary for vehicle & home | Permitted | Permitted | Permitted | Permitted |
| Emery boards | Permitted | Permitted | Permitted | Permitted |
| Small fingernail clippers | Permitted | Permitted | Permitted | Permitted |
| Contact lenses | Permitted | Permitted | Permitted | Permitted |
| Confectionary items (e.g. gum, candy) for personal use only | Permitted | Permitted | Permitted | Permitted |
| Watch, rings | Permitted | Permitted | Permitted | Permitted |

EXHIBIT 5
Rules for Non-Employees of ADC in Arizona State Prisons

POLICY STATEMENT:

While the institution recognizes the need of non-staff personnel to have in their possession certain personal items, limits are necessary for the security and safe operation of the institution.

PROCEDURES:

1. All persons entering the institution are subject to search prior to entry and while on the grounds of the institution. All non-staff personnel will, at all times, remain in their authorized area under the direction of the project coordinator.
2. Persons are allowed the materials necessary for the performance of their duties.
3. All non-staff personnel may have in their possession the following:
 - A. A wallet with normal contents, e.g.,
 - 1) photos and personal papers.
 - 2) currency not to exceed \$40.00 (Forty Dollars). Excess will be reported to the shift commander prior to entry.
 - 3) no credit cards or checkbooks are allowed.
 - B. Handkerchief and comb.
 - C. Tobacco products and smoking apparatus for normal daily use.
 - D. Keys as necessary (auto and home).
 - E. Fingernail clipper.
 - F. Confectionary items (gum, candy, etc.)
 - G. Watch and rings.
4. All persons are prohibited from introducing medication drugs into the institution grounds unless such a medication has been properly prescribed by a licensed physician and is in the original prescription container.
 - A. Medications of a stimulate nature, i.e., Dexedrine, Preludins, Tenuate or any other appetite suppressant or any hypnotic-type drug, are specifically prohibited on institution property. Persons who are taking this type of medication prior to coming to the institution will report this fact to the Shift Commander, prior to reporting to their authorized area.
 - B. Persons taking medications of the tranquilizer class, i.e., Valium, Librium, Miltown or any of the anti-depressant class, i.e., Sinequan, Triavil, Elavil or any mood modifying drug of any type; Pain medications i.e., Percodan, Percocet, hydrocodone (Vicodin), Tylenol with codeine, propoxphene, etc., will report this fact to the Shift Commander prior to going to their authorized area. Possession of these types of drugs on prison grounds will be limited to that amount necessary during one eight hour shift.

EXHIBIT 5
Rules for Non-Employees of ADC in Arizona State Prisons

C. Personnel taking any other class of medication i.e., antihistamines, antihypertensives, anticholinergics, etc., are limited in the introduction of only such amount of medication as will be required during the period of one eight hour shift, and this fact will be reported to the Shift Commander.

- 1) Any deviation from this policy must be cleared with the Warden of the unit. Persons violating this policy may subject themselves to eviction from institution property and/or prosecution.

NOTE: If anyone loses or has stolen any personal items in his possession, the institution will attempt to retrieve the items, but cannot guarantee the return thereof nor provide reimbursement.

The following Arizona Revised Statutes dealing with inmate and non-staff member relationships require your strict adherence at all times during your stay at the Arizona State Department of Corrections.

Interest of employee and non-employee in contracts, gifts to or for inmates: penalty

- 1) No non-staff member shall be interested in any contract or purchase made by anyone for or on behalf of the prison, or receive, directly or indirectly, compensation for his services other than prescribed by the administrator of the institution, nor shall he receive any compensation whatever for any act or services he performs for or on behalf of a contractor, or any agent or employee of a contractor.
- 2) No non-staff personnel, without permission of the administrator shall make a gift or present to or receive a gift from an inmate, or barter or deal with an inmate.
- 3) Any person violating this section shall be discharged from office or service, and every contractor, or employee or agent of a contractor, shall not be permitted to act or serve again as such contractor, agent or employee.

Unauthorized communication with inmates: penalty

A person not authorized by law who, without the permission of the officer in charge of the state prison, communicates with a person imprisoned or detained therein, or who takes any letter, writing, literature or reading matter to or from a person imprisoned or detained therein, is guilty of a misdemeanor.

Signature

Date

EXHIBIT 6
Safety Program Plan Requirements

Contractors and authorized subcontractors are required to abide by all applicable laws and regulations pertaining to safety on the project such as, but not limited to, Occupational Safety and Health Administration Regulations (OSHA 29CFR1910 or 29CFR1926). A copy of any applicable safety standards should be obtained and reviewed by the contractor and authorized subcontractors.

The Contractor shall complete a hazard assessment for the project to identify control measures that will be necessary to ensure the safety of workers and the public during the project. The Contractor must have a Company Safety Manual and Site Specific Safety Plan that document these control measures. Unless there is a more specific requirement in the special provisions, these documents must be submitted to and approved by the Agency's Project Administrator prior to work commencing. The use of a location specific Job Hazard Analysis (JHA) by the Contractor may satisfy the hazard assessment and Site Specific Safety Plan requirement. Each contractor and all authorized subcontractors will be required to abide by the terms of the Site Specific Safety Plan.

The Contractor may utilize the ADOT/AGC Contractor Safety Plan Checklist in developing the safety plan. This checklist may not address all the hazards a contractor may encounter during the course of the project or changes in regulations that may occur. Use of this checklist does not alleviate the responsibility of the Contractor to identify the hazards to their workers or the public in developing their Site Specific Safety Plan or to take measures to minimize the risk associated with their work activity.

The Contractor shall designate a competent person as a Safety Supervisor for the project and provide their contact information to the Agency Project Administrator. The Safety Supervisor must have the authority to implement safety measures and stop unsafe work activities. The Safety Supervisor shall have knowledge of the work practices for the contracted activity, hazards associated with the activity, the Contractor's Safety Manual and the Site Specific Safety Plan.

The Contractor is responsible for emergency services such as Doctor, Hospital, Fire Department, and Police which may be required should an incident occur at the jobsite during the contract period. The Contractor shall comply with ADOT Transportation Management Plan (TMP) policy requirements when performing work on roadways. All incidents that occur on the project or as a result of contracted work activity shall be documented and reported to the Agency Project Administrator.

The Contractor is responsible for all required safety training, documentation of training and certification for any workers in the performance of their duties on the project.

When conducting a hazard assessment or preparing safety plans, the Consultation Section of the Arizona Division of Occupational Safety and Health (ADOSH) offers free assistance. Contact the ADOSH Consultation Section at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona. Your Worker's Compensation insurance carrier may also provide this assistance.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
D & H UNITED FUELING SOLUTIONS, INC, DBA COCHISE FUELING SOLUTIONS**

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 \$500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Repair, maintenance, and testing services of the City's fuel bulk systems for Fleet Management and the Glendale Municipal Landfill, on an as-needed basis.

PRICING SHEET

Installation, Repair and Maintenance of Fuel Tank Systems - BPM006417

Labor and Travel Rates

If submitting a bid, price tabs 1 and 2 should be filled out.

Instructions: The Contractor shall provide labor rates for any labor levels that may be applicable to the service being offered. This may include Field Service, Emergency After Hours etc. Any additional labor rates shall be listed. The base Laborer and Technician hourly rates will be used for evaluation purposes. Below indicate all labor rates as required in section 4.

Contractor shall enter the total amount in row 20 to Line #1 in APP under the line items tab.

| Labor | Estimated Quantity - Annually | Rate Price per Hour | Extended Amount (Price X Quantity) |
|---|-------------------------------|---------------------|------------------------------------|
| Base Laborer Rate | 300 | 59 | \$ 17,700.00 |
| Base Technician Rate | 300 | 72 | \$ 21,600.00 |
| Travel Time Laborer (Travel time from the dispatch location or office, whichever is shorter) | 150 | 59 | \$ 8,850.00 |
| Travel Time Technician (Travel time from the dispatch location or office, whichever is shorter) | 150 | 59 | \$ 8,850.00 |
| AFTER HOURS | | 108 | \$ 108.00 |
| HOLIDAYS | | 144 | \$ 144.00 |
| | | \$ _____ | \$ _____ |
| | | \$ _____ | \$ _____ |
| | | \$ _____ | \$ _____ |

Total amount to be entered into Line #1 in the APP Line Items tab

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PRICING SHEET

Installation, Repair and Maintenance of Fuel Tank Systems - BPM006417

Pricing for Fuel Tank Systems Parts used in a Repair

If submitting a bid, price tabs 1 and 2 should be filled out.

Instructions: The Contractor shall provide each manufacture for parts being offered in accordance to section 4.6 of the scope of work. For each manufacturer offered, include at minimum, manufacturer's name/classification and the manufacturer's website. Markup costs may not exceed 20% to the using agency per 4.6.1 of the scope of wrok. The Contractor shall provide evaluation pricing in the table below labeled Evaluation Pricing. The Contractor shall enter the total amount in row 24 to Line #2 in APP under the line items tab.

| Manufacturer/Classification | | Manufacturer's Website | |
|--|---------------------------|------------------------|---------------------------|
| PETRO CLEAR | | PETROCLEAR.COM | |
| OPW | | OPWGLOBAL.COM | |
| | | | |
| | | | |
| | | | |
| | | | |
| <p>Evaluation Pricing:The contractor shall provide pricing for the listed evaluation parts. The pricing provided for the evaluation parts will be used in evaluation.</p> | | | |
| Evaluation Parts | Estimated Annual Quantity | Price Per Each \$ | Extended \$ (Price X QTY) |
| Filters | 52 | 8.51 | \$ 442.52 |
| 2-IOP-0150 safety valve | 25 | 148.89 | \$ 3,722.25 |
| | | \$ | 4,164.77 |

Total amount to be entered into Line #2 in the APP Line Items tab

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