

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BALAR HOLDING CORP. DBA BALAR EQUIPMENT**

This Linking Agreement (“Agreement”) is entered into as of this _____ day of _____, 2026, between the City of Glendale, an Arizona municipal corporation (“City”), and Balar Holding Corp. dba Balar Equipment, an Arizona corporation, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On November 1, 2023, the City of Phoenix, a member of the S.A.V.E. Cooperative Purchasing Agreement, entered into a contract with Contractor to purchase the goods and services described in the Original Equipment Manufacturer (OEM) Parts and Service Contract No. 161205--0 (RFA 24-FSD-028) (“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 was November 1, 2023, until the date the contract terminates on October 31, 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 October 31, 2028. The initial period of this Agreement is the period from the Effective Date of this Agreement until October 31, 2026.
- B. The City may extend the term of this Agreement for two (2) 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 four hundred fifty thousand dollars (\$450,000) 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 Fleet Management - Sandy Ressler
6210 W. Myrtle Avenue
Glendale, AZ 85301

and

Balar Holding Corp. dba Balar Equipment
c/o Joey Pellecchia
11023 N. 22nd Avenue
Phoenix, AZ 85029

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: _____

Patrick S. Banger
City Manager

"Contractor"

Balar Holding Corp. dba Balar Equipment,
an Arizona corporation

By: _____

Name: Joey Pellecchia
Title: President

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
BALAR HOLDING CORP. DBA BALAR EQUIPMENT**

**EXHIBIT A
CITY OF PHOENIX
CONTRACT NO. 161205--0 (RFA 24-FSD-028)
ORIGINAL EQUIPMENT MANUFACTURER (OEM) PARTS AND SERVICE**

ORDINANCE S-50295

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH SEVERAL CONTRACTORS TO PROVIDE BEST PRICING FOR PARTS AND SERVICE FOR FLEET SERVICES; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager, or his designee, is authorized to enter into contracts with RWC International Ltd.; Balar Holding Corp.; Bingham Equipment Company; Cummins Inc.; Norwood Equipment Inc.; Rush Truck Centers of Arizona Inc.; Velocity Truck Centers dba Freightliner of Arizona LLC; Empire Southwest, LLC; Simpson Norton Corporation; Redsky Fire Apparatus LLC; Sonsray Machinery, LLC; Southwest JCB Inc.; H&E Equipment Services, Inc.; and Hughes Fire Equipment, Inc. to provide fleet vehicle original parts/equipment associated with things like fire apparatus, street sweepers, refuse trucks, off-road equipment, and various heavy-duty trucks and equipment for the Public Works Departments. Each contract term is three years, beginning on or about November 1, 2023 with two one-year options to extend. The total combined contract cost will not exceed thirty million nine hundred

forty-nine thousand five hundred ninety dollars (\$30,949,590). The contracts may contain other terms and conditions deemed necessary by City staff.

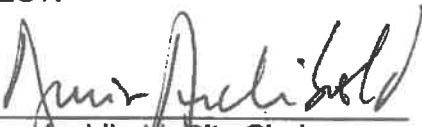
SECTION 2. The City Controller is authorized to disburse all funds for the purposes of this ordinance.

PASSED by the Council of the City of Phoenix this 1st day of November, 2023.



MAYOR


ATTEST:




Denise Archibald, City Clerk



APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

BY: 

Jennifer Vega 

REVIEWED BY:



Jeffrey Barton, City Manager

MWM:smb:LF23-2441:11/1/23: 2403291_1.doc

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BALAR HOLDING CORP. DBA BALAR EQUIPMENT**

**EXHIBIT B
Scope of Work**

To provide parts and repair services to heavy-duty vehicles and equipment, on an as-needed basis.



City of Phoenix

161205--0

**REQUEST FOR AGREEMENT
RFA 24-FSD-028
ORIGINAL EQUIPMENT MANUFACTURER(OEM)
PARTS AND SERVICE**

**City of Phoenix
Public Works
200 W. Washington St.
7th Floor
Phoenix, AZ
85003**

**City of Phoenix
REQUEST FOR AGREEMENT
RFA 24-FSD-028
ORIGINAL EQUIPMENT MANUFACTURER(OEM) PARTS AND
SERVICE**

1. INTRODUCTION 3
2. AGREEMENT 4
3. SCOPE OF WORK 5
4. STANDARD TERMS AND CONDITIONS 6
5. SPECIAL TERMS AND CONDITIONS.....18
6. DEFENSE AND INDEMNIFICATION22
7. INSURANCE REQUIREMENTS23

Attachments:

SUBMITTALS PACKET

1. Introduction

1.1. Summary

The City of Phoenix invites **sealed offers** for Original Equipment Manufacturer (OEM) Parts and Service on an **as-needed** basis beginning on or about November 1, 2023.

1.2. Contact Information

Brittany Rivera

Contract Specialist I

200 W. Washington St.

7th Floor

Phoenix, AZ 85003

Email: brittany.rivera@phoenix.gov

Phone: [\(602\) 534-9614](tel:6025349614)

Department:

Public Works

2. Agreement

2.1. Agreement

THIS AGREEMENT (this "Agreement"), entered into upon signature and recording by the City Clerk's department, as required by Phoenix City Code, ("Effective Date"), is between the City of Phoenix, an Arizona municipal corporation (the "City"), and This should reflect each of the Balar Equipment ("Contractor"), hereafter, the "Parties."

2.2. Term of Agreement

This Agreement will expire after three-year term, with two option years.

2.3. Compensation

City shall pay Contractor in accordance with the Price Schedule.

2.4. Termination

This Agreement will terminate upon the earliest occurrence of any of the following:

- A. reaching the end of the term exercised as set forth in Term of Agreement;
- B. completing the service(s) or delivery of goods set forth in the Scope of Work;
- C. payment of the maximum compensation; or
- D. termination pursuant to the provisions of this Agreement.

2.5. Recitals

The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for the purchase of goods and services.

The City desires to obtain the goods or services that are specifically set forth in this Agreement.

The City is operating in accordance with the Phoenix City Code and Administrative Regulation 3.10 and enters this agreement under an exception.

Contractor possesses the skills and expertise necessary to provide such goods or services as desired by the City.

This Agreement is authorized by the City Council 23-2441 on 11/01/2023.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the covenants and promises contained herein, the Parties hereby agree as follows:

3. Scope of Work

3.1. Introduction

The City of Phoenix, Public Works Department, Fleet Services Division (FSD) is responsible for maintaining a fleet of over 7,800 different vehicles and equipment, ranging from light, medium, and heavy-duty: including refuse collections trucks and various fire apparatus. FSD's mission is to provide our customers with fleet equipment that is safe, efficient, reliable, sustainable, and supports their mission in serving the City of Phoenix residents.

This will be considered a 2-tier contract, with tier 1 for OEM repair services, and the tier 2 for the procurement and delivery of repair / replacement parts. Both Tiers will be on an "as needed" / "if needed" basis for a period of three (3) years, with two (2) additional (annual) extensions, beginning after City Council approval, according to the requirements contained herein. Contractors may be required to sign for terms under Tier 1, Tier 2, or both.

Tier 1 (Service): Contractor(s) will provide all necessary labor, materials, parts, accessories, assemblies, and/or components to meet OEM (Original Equipment Manufacturer) guidelines and quality.

Tier 2 (Parts): The Contractor shall provide parts and accessories as required for the City's fleet equipment. Contractors shall provide all parts and accessories offered by the manufacturers which they represent.

3.2. CONTRACTOR REQUIREMENTS

Tier 1 (Service)

All service performed by the Contractor under this contract will be consistent with OEM specification and will meet all applicable federal, state, and local standards regarding this type of equipment or operation of equipment. Contractor must also meet all applicable OSHA regulations to ensure the safety of contractor staff, city employees and residents.

The contractor will maintain a high standard of cleanliness while servicing City vehicles and equipment.

It is the expectation of the City, as described herein, that the Contractor will provide timely maintenance and repair service to correct deficiencies and return the equipment within 3-5 business days post pick-up from a respective city shop location; extensions beyond 5 business days shall be approved by shop management.

The Contractor must have the knowledge and expertise necessary to complete the full scope and depth of maintenance and repairs to the specific OEM specification.

The Contractor will respond verbally or via electronic communication to all service call requests within (2) business hours. Business hours are defined as Monday through Friday from 6am to 5pm. Equipment pick-up time from the respective city shop (post verbal or electronic communication contact) shall be within 48 business hours.

Below is a list of the most common shop locations with addresses; additional locations in the Phoenix metropolitan area may be added without notice.

Location	Address
1. 22nd Avenue Service Center	2441 South 22nd Avenue, Phoenix, AZ 85009
2. Okemah Service Center,	3828 East Anne Street, Phoenix, AZ 85040
3. Glenrosa Service Center	4021 West Glenrosa, Phoenix, AZ 85019
4. Union Hills Service Center	138 East Union Hills, Phoenix, AZ 85024
5. Fire Operations Service Center	2625 South 19th Avenue, Phoenix, AZ 85009
6. Salt River Service Center	3045 South 22nd Avenue, Phoenix, AZ 85009
7. 27th Avenue Transfer Station	3060 South 27th Avenue, Phoenix, AZ 85009
8. North Gateway Transfer Station	3025 North Black Canyon Highway, Phoenix AZ 85085
9. 91st Avenue Wastewater Treatment Plant	5615 South 91st Avenue, Tolleson, AZ 85353
10. State Route 85 Landfill	28361 West Patterson Rd., Buckeye, AZ 85326
11. Southern Command Station	3443 South Central Avenue, Phoenix, AZ 85040
12. Black Mountain Precinct	33355 North Cave Creek Road, Cave Creek, AZ 85331
13. Cactus Park Precinct	12220 North 39th Avenue, Phoenix, AZ 85029
14. Central City Precinct	1902 South 16th Street, Phoenix, AZ 85034
15. Desert Horizon Precinct	16030 North 56th St, Scottsdale, AZ 85254
16. Estrella Mountain Precinct	2111 South 99th Avenue, Tolleson, AZ 85353
17. Maryvale Precinct	6180 West Encanto Blvd. Phoenix, AZ 85035
18. Mountain View Precinct	2075 East Maryland Avenue, Phoenix, AZ 85016
19. South Mountain Precinct	400 West Southern Avenue, Phoenix, AZ 85041

Any request for service outside of the defined business hours must be addressed as defined above shall occur the next business day.

The Contractor will evaluate (diagnose) the request for services and provide a written estimate of all necessary work activities to return the equipment to an in-service status.

The Contractor shall not begin any work activities without prior written approval, except for 1 hour of diagnosis time to confirm the cause of failure. The Contractor shall gain shop management approval for any additional diagnostic time. Likewise, shop management shall approve all subsequent time and material service costs.

The Contractor will provide an itemized listing of estimated costs for each repair/complaint. The itemized details must include the labor hours, contracted labor rate, labor cost, part number, part description, part cost, part quantity per each repair activity, along with a description of services to be performed, including industry standards of Complaint, Cause and Correction. The Contractor's written estimate will be submitted to the corresponding location via electronic communication. All estimates must have the ability to show individual job part mark-up or discounting to verify part pricing, in accordance with submittal section.

If additional supplemental work activities are found outside the original estimate, the Contractor will provide a written estimate of the supplemental repairs to the corresponding location via electronic communication for approval.

The Contractor should not commence in performing any work activities until a purchase order has been received electronically from the corresponding location authorized staff.

If the repair requires a new part, the replacement part must be available locally or delivered within forty-eight (48) hours at no additional cost to the City.

Upon completion of all work activities, and prior to the equipment being returned to in-service status, the contractor must perform a quality assurance inspection.

The City anticipates that most services performed under this contract will take place during normal business hours. However, there may be a need to provide night, weekend, and holiday service on an as-needed basis.

Tier 2 (Parts)

The Contractor shall establish and maintain sufficient local product inventory to support the City's fleet of vehicles and equipment. The Contractor shall guarantee that stock of products, specified in this agreement, are available locally and shall provide parts delivery or will-call services, which may include night, weekends, and holidays for equipment utilized to maintain public health (sanitation) and public safety (Police and Fire).

All parts provided by the Contractor under this contract shall meet or exceed OEM specifications and will meet all applicable federal, state, and local laws.

Special handling and/or freight charges must be pre-approved. The Contractor will assume all shipping/delivery charges unless prior authorization from the City is provided. If such authorization is received, the City will reimburse the Contractor as a pass-through cost on the invoice with documentation that includes the price the Contractor paid for the special handling or freight; mark-up on freight will not be permitted.

The Contractor must meet the following fill rates:

The Contractor will make available or deliver a minimum of 85% of all orders within 24-hours after receipt of order.

The Contractor will make available or deliver all orders within 48 hours after the receipt of order.

For orders requiring more time than allowed, as outlined above, the Contractor will notify the City authorized representative by email. This notification must include the reason for the delay, backorder information, and estimated date/time of delivery. The Contractor will provide weekly status updates on the order until delivered.

If an item cannot be supplied immediately from Contractor's stock, the City reserves the right to purchase the item from other sources when the City determines that an emergency purchase is needed.

Contractor must off-load all deliveries and pick up parts cores weekly at no additional cost to City.

The Contractor may make multiple daily deliveries to multiple locations, as required, to fulfill orders. Delivery schedules to be determined by ordering location.

Deliveries will be made to various City locations. Below is a list of the most common delivery locations with addresses; additional locations in the Phoenix metropolitan area may be added without notice.

Location	Address
1. 22nd Avenue Service Center	2441 South 22nd Avenue, Phoenix, AZ 85009
2. Okemah Service Center,	3828 East Anne Street, Phoenix, AZ 85040
3. Glenrosa Service Center	4021 West Glenrosa, Phoenix, AZ 85019
4. Union Hills Service Center	138 East Union Hills, Phoenix, AZ 85024
5. Fire Operations Service Center	2625 South 19th Avenue, Phoenix, AZ 85009
6. Salt River Service Center	3045 South 22nd Avenue, Phoenix, AZ 85009
7. 27th Avenue Transfer Station	3060 South 27th Avenue, Phoenix, AZ 85009
8. North Gateway Transfer Station	3025 North Black Canyon Highway, Phoenix AZ 85085
9. 91st Avenue Wastewater Treatment Plant	5615 South 91st Avenue, Tolleson, AZ 85353
10. State Route 85 Landfill	28361 West Patterson Rd., Buckeye, AZ 85326
11. Southern Command Station	3443 South Central Avenue, Phoenix, AZ 85040
12. Black Mountain Precinct	33355 North Cave Creek Road, Cave Creek, AZ 85331
13. Cactus Park Precinct	12220 North 39th Avenue, Phoenix, AZ 85029
14. Central City Precinct	1902 South 16th Street, Phoenix, AZ 85034
15. Desert Horizon Precinct	16030 North 56th St, Scottsdale, AZ 85254
16. Estrella Mountain Precinct	2111 South 99th Avenue, Tolleson, AZ 85353
17. Maryvale Precinct	6180 West Encanto Blvd. Phoenix, AZ 85035
18. Mountain View Precinct	2075 East Maryland Avenue, Phoenix, AZ 85016
19. South Mountain Precinct	400 West Southern Avenue, Phoenix, AZ 85041

3.3. PRICING

TIER 1

A written quote will be provided to the authorized City representative by the vendor showing estimated hours for repair, contracted hourly labor rate, and itemized list of parts and pricing required to complete work. All quotes must have the ability to show individual job part mark-up or discounting to verify part pricing, in accordance with submittal section.

Pricing shall be consistent with best industry practices, which ensures labor charges are billed only once in the event a task is overlapping.

Labor hours should reflect Chilton/Mitchell labor manual when applicable or industry standard best practices when there is not a labor manual for reference.

All time increments of labor shall be quoted at the job/complaints deepest level and include all removal/install to gain access to components necessary to complete the job/complaint at hand.

Labor time increments will be billed in .10^{ths} of an hour based upon book time or industry standard.

Services requested within this contract can be requested from any City Fleet services facility, which includes but is not limited to the following locations in the Phoenix metropolitan area.

Location	Address
1. 22nd Avenue Service Center	2441 South 22 nd Avenue, Phoenix, AZ. 85009
2. Okemah Service Center,	3828 East Anne Street, Phoenix, AZ. 85040
3. Glenrosa Service Center	4021 W. Glenrosa, Phoenix, AZ 85019
4. Union Hills Service Center	138 East Union Hills, Phoenix, AZ. 85024
5. Fire Operations Service Center	2625 South 19 th Avenue, Phoenix, AZ 85009
6. Salt River Service Center	3045 South 22nd Avenue, Phoenix, AZ 85009
7. 27 th Avenue Transfer Station	3060 South 27 th Avenue, Phoenix, AZ 85009
8. North Gateway Transfer Station	3025 North Black Canyon Highway, Phoenix 85085
9. 91 st Avenue Wastewater Treatment Plant	5615 South 91 st Avenue, Tolleson, AZ 85353
10. State Route 85 Landfill	28361 West Patterson Rd., Buckeye, AZ. 85326
11. Southern Command Station	3443 South Central Avenue, Phoenix, AZ 85040
12. Black Mountain Precinct	33355 North Cave Creek Rd, Cave Creek, AZ., 85331
13. Cactus Park Precinct	12220 North 39 th Avenue, Phoenix, AZ 85029
14. Central City Precinct	1902 South 16th Street, Phoenix, AZ 85034
15. Desert Horizon Precinct	16030 North 56 th St, Scottsdale, AZ., 85254
16. Estrella Mountain Precinct	2111 South 99 th Avenue, Tolleson, AZ., 85353
17. Maryvale Precinct	6180 West Encanto Blvd. Phoenix, AZ., 85035
18. Mountain View Precinct	2075 East Maryland Avenue, Phoenix, AZ., 85016
19. South Mountain Precinct	400 West Southern Avenue, Phoenix, AZ., 85041

TIER 2

The City may provide a spreadsheet of specific parts currently used. The Contractor will complete the spreadsheet in its entirety and will reflect the contracted rate and discounts set forth by the Contractor. The return of the completed spreadsheet will be mandatory.

The City may provide a spreadsheet of specific parts currently used. The Contractor will complete the spreadsheet in its entirety and will reflect the contracted rate and discounts set forth by the Contractor. The return of the completed spreadsheet will be mandatory.

3.4. ESTIMATE / INVOICE REQUIREMENTS**TIER 1**

Upon the initial request for services, the designated City staff will provide the Contractor with a shopping cart number (8000#). Invoices without a shopping cart number or purchase order (440#) will be considered as unauthorized work.

Contractor should not commence in performing any work activities until a shopping cart number or purchase order has been received verbally or electronically from the corresponding location authorized staff.

Estimates submitted to the City shall be clear and concise.

Invoices must include the following information before processing for payment can begin. All final invoices must be provided within twenty-four (24) hours from final quality assurance inspection.

Invoices header must include Contractor name, address, phone number, email address, invoice number and invoice date.

Invoices header must include City unit number and current odometer reading.

Invoice header must include City issued shopping cart or purchase order number.

Invoices must include labor hours, contracted labor rate, and parts utilized, including part number, part description, part quantity and part cost. All invoices must have the ability to show individual job part mark-up or discounting to verify part pricing, in accordance with submittal section. Invoice must also include complaint, cause, and correction narrative for each repair job performed by vendor.

Warranty job invoices must also include complaint, cause, and correction. The job must also include labor time, parts utilized (including part number) part description, and part quantity at a zero cost to the City.

The City will not pay for unauthorized modifications or additions.

Contractor must invoice labor hours and part pricing in accordance with submittal section.

3.5. METHOD OF INVOICING

Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:

- City purchase order number or shopping cart number.
- Items listed individually by the written description and part number.
- Unit price extended and totaled.
- Quantity ordered, back ordered, and shipped.
- Applicable tax.
- Invoice number and date.
- Delivery address. Payment terms.
- FOB terms.
- Remit to address

SUPPLIER PROFILE CHANGES:

It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

3.6. VEHICLE STORAGE

TIER 1 (Service)

The Contractor(s) will be responsible for adequate and secure storage of all vehicles at no cost to the City. The Contractor(s) will be responsible for any stolen or damaged equipment while the vehicle(s) is in the Contractor's custody. Vehicles must be stored in a secured area, and never

in an area accessible to the public. The contractor will be liable for city vehicle damage or theft while in the position of the contractor, including transport to and from city facilities.

3.7. WARRANTY REQUIREMENTS

Tier 1 (Service)

All warranty work will be completed within forty-eight (48) hours. The Contractor will warranty all labor and parts for a minimum period of twelve (12) months, 12,000 miles or 400 hours, whichever comes first. A "NO CHARGE" invoice will be provided for all warranty repairs detailing failure, possible cause, parts descriptions, and detail description of labor performed.

If a City supplied part is provided for repairs, and it's determined the city supplied part prematurely failed, the contractor shall bill the city for all time and materials invested to determine such failure, up to \$300.00. The contractor shall gain approval from shop management on any cost to determine or remedy such failures above \$300.00. The city part must be returned with the vehicle to receive payment. Outside of this exception, the above warranty terms shall prevail.

All warranty work shall be completed within four (4) business days.

The Contractor shall maintain a sufficient supply of products and/or parts to adequately support the contracted repairs.

The Contractor will guarantee that stock of product specified in this agreement is available locally.

The Contractor will be solely responsible for any future repairs or consequential damages related to failed or improper services performed under this agreement.

3.8. THIRD PARTY WARRANTY ADMINISTRATION

(TIER 1 ONLY)

The Manufacturer and/or Contractor will accept, and process warranty claims from a contracted third-party warranty administrator on behalf of the City of Phoenix. Contractor will authorize payment to City of Phoenix for all warranties approved and equivalent.

Tier 2 (Parts)

Contractor will guarantee all products supplied under this contract for a minimum of 12 months against defects in material and workmanship. The 12-month warranty shall begin from the installation of the component by city staff, and not from time of purchase.

Freight charges, restocking fees from manufacturer, process, and handling to include parts and labor will be borne by the Contractor.

Contractor shall issue a credit memo to the City of Phoenix, Auto Stores, for failed products. Replacement parts will not be accepted under this contract.

Parts will be OEM approved only and will maintain all factory warranty qualifications. If parts are used in conjunction with a warranty repair, they will be supplied at no cost to the City.

All merchandise involved in warranty claims will be picked up from City locations by the Contractor on a weekly basis. Warranty claims must be processed within three (3) weeks of pick up. All Contractor disputed warranty claims will be brought to the attention of the Fleet Services Division's Warranty Department within that same three (3) week period in writing. If the claim is not disputed in the allotted period, the claim shall be deemed approved and payable to the City.

3.9. CONTRACTOR QUALIFICATIONS

TIER 1 (SERVICE)

The contractor must have been an OEM manufacturer/distributor for a minimum of five (5) consecutive years and be completely familiar with the specified requirements and methods needed for proper performance of this contract.

The Contractor must employ a minimum of three (3) service technicians. Each technician will have a minimum of two years' experience providing maintenance and repair for the type of equipment being repaired. Unqualified employees are not permitted to provide assistance of any kind under this contract.

Contractor(s) shall utilize properly qualified employees in the performance of this contract. A qualified employee is defined as one who is trained and capable of properly, safely, and promptly providing services requested in association with this contract. Employees must have a minimum of two years' experience performing OEM manufacturer repair services. Unqualified employees are not permitted to provide assistance of any kind under this contract.

A high level of customer service and professionalism is a priority for the City. Contractor and Contractor employees shall provide services in a professional, business-like, and efficient manner providing the highest level of assistance, service, and courtesy to patrons of the facility. Complaints must be responded to quickly and the City's representative must be informed of all customer issues and resolutions immediately. All communications shall be through the City representative.

If the City determines that the qualifications, actions or conduct of any Contractor(s) employee have violated this agreement or are otherwise detrimental to the City, a written notice will be issued to the Contractor. Upon receipt of such notice that Contractor must promptly provide a qualified replacement person(s) to provide services under this contract. Examples of such conduct include performing unsatisfactory services, poor customer service, interfering with operation of City fleet or inappropriate behavior towards City employees, customers, and other Contractor(s) or Subcontractor(s).

The facility must have a parts room with sufficient stock to complete routine service and repair procedures. The stock turn rates should be established to meet an 85% stock fill rate from inventory.

Each repair location must be able to accommodate and secure vehicles while in the process of being repaired or waiting for repairs or parts delivery. The Contractor(s) will be responsible for any stolen or damaged equipment while the vehicle(s) is in the Contractor's custody. Vehicles must be stored in a secured area, and never in an area accessible to the public. The contractor will be liable for city vehicle damage or theft while in the position of the contractor, including transport to and from city facilities.

TIER 2 (PARTS)

Contractor shall utilize properly qualified employees in the performance of this contract. A qualified employee is defined as one who is trained and capable of properly, safely, and promptly providing services requested in association with this contract. Unqualified employees are not permitted to provide assistance of any kind under this contract.

A high level of customer service and professionalism is a priority for the City. Contractor and Contractor employees shall provide services in a professional, business-like, and efficient manner providing the highest level of assistance, service, and courtesy to patrons of the facility. Complaints must be responded to quickly and the City's representative must be informed of all customer issues and resolutions immediately. All communications shall be through the City representative.

If the City determines that the qualifications, actions or conduct of any Contractor employee has violated this agreement or is otherwise detrimental to the City, a written notice will be issued to the Contractor. Upon receipt of such notice the Contractor shall promptly provide a qualified replacement person(s) to provide services under this contract. Examples of such conduct include performing unsatisfactory services; poor customer service; interfering with operation of City fleet; or inappropriate behavior towards occupants, other contractors, or subcontractors.

3.10. PART AND MATERIALS SUPPLY REPORTING (TIER 2 ONLY)

Upon request, the Contractor shall provide an accurate and complete report detailing all orders placed under this contract. This report shall include:

- The date the order was placed.
- Description of the part and accessory (Manufacturer's Part Number, Catalog Date, List Price, Discount Price).
- Carrier shipping information.
- The date the order is complete.
- City reference order number.

Parts and materials provided under this contract shall be in conformance with all provisions of this agreement; legal statutes; code requirements; applicable OEM specifications; and Fleet Services Policies.

The City reserves the right to exchange or receive vendor credit, on an equal dollar basis, all unused parts, in their original packaging, and of the same manufacturer and brand stocked by the contract vendor. The Contractor will credit returned parts at the current City cost (at time of exchange) less a maximum 10% restocking charge. Credits will not be required for parts that have become obsolete more than 18 months after the original date of acceptance of that part by the City. Parts to be exchanged will be those parts, which have become obsolete to the City. The City will be the sole judge of obsolescence.

The City will not supply invoices for returns on stock clean ups. Stock clean ups are done on as needed basis, but no more frequently than twice a year per year delivery location.

3.11. SPECIFIC PARTS DESCRIPTION (TIER 2 ONLY)

Unless otherwise indicated, no substitutions or alternate product lines are permitted for parts offered under this contract.

3.12. INSPECTION AND ACCEPTANCE (TIER 1 and 2)

The City reserves the right to accept or reject services or materials deemed unsatisfactory within a 48-hour period post-delivery to the City of Phoenix. Parts and materials reserved for stock and are not immediately installed may be returned to Contractor if City finds part damaged or non-functioning within six months from the date the part was accepted by the City.

3.13. PROMOTIONAL PRICING (TIER 1 and 2)

The Contractor may offer sales promotions to the City at the Contractor's discretion, for specific services or groups of services within the scope of this Contract. Sales promotions can include additional rebates, specials, product discounts offered by manufacturers, etc.

3.14. SAFETY, PRECAUTIONS AND CLEANLINESS (TIER 1 and 2)

Contractor(s) shall follow all procedures set forth by City policies. Including staying in designated areas deemed safe for delivery drop off (i.e. following speed limits on City property, use of proper safety protection, time restrictions of accepting deliveries, etc.)

Contractor(s) shall perform all services in a safe manner for means, methods, techniques, procedures, and safety precautions in connection with performance of these services.

Contractor(s) shall be responsible for its employees and the execution of all required safety, precautions and cleanliness during services under this contract.

3.15. MEETINGS AND UPDATES (TIER 1 and 2)

Contractor and City representative may request to meet on a quarterly basis, or as often as necessary, to review expectations and accomplishments. This will provide the opportunity to review issues and take corrective measures to assure quality work performance is met and deadlines are achieved.

OEM WARRANTY REQUIREMENTS

Contractor will be an authorized repair and part warranty center with the OEM manufacturer and shall be capable of submitting all necessary warranty paperwork to the City at no charge

Parts and repair services will be OEM approved only and will maintain all factory warranty qualifications. If parts are used in conjunction with a warranty repair, they will be supplied at no cost to the City.

Contractor will be approved to distribute OEM parts and perform factory Recalls and/or Campaigns at the direction of the OEM at no charge to the city.

3.16. PART CREDIT MEMO REQUIREMENTS (TIER 2 ONLY)

The Contractor is required to regularly maintain the most up-to-date contact information in the City's Vendor Invoice Management (VIM) portal. In the event an order is double filled due to the

VIM portal not being updated with the current correct information, the City will not be charged a restocking fee.

Contractor will not deliver parts without obtaining the proper purchase order number.

The city will not pay for unauthorized modifications or additions.

Credit Memo requirements:

- A. Credit memos shall be created as a one-to-one basis. Credits given on items shall be from the same original invoice and purchase order number**
- B. Credit memos are to have the following information to be processed in a timely manner:**
 - 1. Original invoice number item was ordered on**
 - 2. Original purchase order number from original invoice**
 - 3. Credit memos must be clearly marked as to type of credit**
 - a. Warranty**
 - b. Core**
 - c. General returns (not for warranty or cores**

4. Standard Terms and Conditions

4.1. Definition of Key Words Used in the Solicitation

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

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

May: Indicates something that is not mandatory but permissible.

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

"A.R.S." Arizona Revised Statute

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

"City" The City of Phoenix

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

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

"Days" Means calendar days unless otherwise specified.

"Chief Procurement Officer" The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

"Employer" Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

"Offer" Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

"Offeror" Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

"Solicitation" Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed Offers, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, Offers, or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

4.2. Contract Interpretation

- A. **Applicable Law:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
 2. Special terms and conditions
 3. Standard terms and conditions
 4. Amendments
 5. Statement or scope of work
 6. Specifications
 7. Attachments
 8. Exhibits
 9. Instructions to Contractors
 10. Other documents referenced or included in the Solicitation
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- D. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

- E. **Non-Waiver of Liability:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

4.3. Contract Administration and Operation

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **Discrimination Prohibited:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **Equal Employment Opportunity and Pay:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as

amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
 4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **Legal Worker Requirements:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
 2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **Health, Environmental, and Safety Requirements:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
 2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
 3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. **Compliance with Laws:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances

when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

- G. **Lawful Presence Requirement:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.
- H. **Continuation During Disputes:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- I. **Emergency Purchases:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4.4. Costs and Payments

- A. **General:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **Payment Deduction Offset Provision:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **Late Submission of Claim by Contractor:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **Discounts:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

- E. **No Advance Payments:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- F. **Fund Appropriation Contingency:** The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- G. **Maximum Prices:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- H. **F.O.B. Point:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

4.5. Contract Changes

- A. **Contract Amendments:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- B. **Assignment - Delegation:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- C. **Non-Exclusive Contract:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The

City reserves the right to obtain like goods or services from another source when necessary.

4.6. Risk of Loss and Liability

- A. **Title and Risk of Loss:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- B. **Acceptance:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **Loss of Materials:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **Contract Performance:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to

its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **Damage to City Property:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

4.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **Non-Exclusive Remedies:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **Default in One Installment to Constitute Breach:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **On Time Delivery:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- D. **Default:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the Solicitation and/or Performance Bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **Covenant Against Contingent Fees:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

F. Cost Justification: In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.

G. Work Product, Equipment, and Materials: All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

4.8. Contract Termination

A. Gratuities: The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

B. Conditions and Causes for Termination:

1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
 - In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
 - In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
 - In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;

- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

C. **Contract Cancellation:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

4.9. Notice

Any notice, consent or other communication ("Notice") required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

4.10. State and Local Transaction Privilege Taxes

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

4.11. Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

4.12. Tax Responsibility Qualification

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest).

Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

4.13. No Israel Boycott

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

4.14. No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of 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.

4.15. Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

4.16. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by

law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

4.17. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

4.18. Claims or Demands Against the City

- A. Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.
- B. Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

5. Special Terms and Conditions

5.1. Term of Contract

The term of this Contract will commence on or about November 1, 2023 and will continue for a period of **three (3) years** thereafter. This Contract includes **two (2) one-year options** to extend the term, for an aggregate **five (5) years**, which may be exercised by the sole discretion of the City.

5.2. Price

All prices submitted shall be firm and fixed for the initial one-year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 60 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

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

5.3. Free on Board (FOB)

Prices quoted shall be FOB destination and delivered, as required, to the following point(s): Various City Service Centers - See Scope of Work.

5.4. Method of Ordering

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

5.5. Method of Invoicing

Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number
- Unit price, extended and totaled
- Quantity ordered, back ordered, and shipped
- Applicable tax
- Invoice number and date
- Delivery address
- Payment terms

- FOB terms
- Remit to address

5.6. Method of Payment

Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.

5.7. Partial Payments

Partial payments are not authorized on individual purchase orders. Payment will be made upon final delivery and acceptance of all goods and services on the purchase order.

5.8. Supplier Profile Changes

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

5.9. Estimated Quantities or Dollar Amounts (Requirements Contracts Only)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

5.10. Suspensions of Work

The City reserves the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

5.11. Hours of Work

All work under this contract shall be coordinated with the City's authorized Department representative. Any changes to the established schedule must have prior written approval by the City's authorized Department representative.

5.12. Post Award Conference

A post-award conference will be held prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

5.13. Performance Interference

Contractor shall notify the City's authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

5.14 Cooperative Agreement

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

5.15. Exclusive Possession

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

5.16. Licenses and Permits

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

5.17. Delivery

All deliveries shall be made between the hours of 8:00 a.m. and 2:00 p.m., local time, Monday through Friday, excluding City holidays. City holiday calendar:
<https://www.phoenix.gov/calendar/holidays>

5.18. Delivery / Service Ticket

Contractor shall provide a packing list or service ticket for items delivered to the City or services provided to the City. Tickets should include the following and a legible copy shall be provided to the City:

- Date
- City purchase order number
- Written description of services which were provided
- Itemized list of materials which were delivered, including quantity
- A unique identification number and Contractor name
- Signature of City employee who accepted for the materials/services

5.19. Miscellaneous Fees

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

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

5.20. Single Source for Warranty Work

Contractor shall be fully responsible for all warranty work. In addition, Contractor shall have or establish a single local Phoenix source that will accomplish or coordinate any necessary

warranty work. Contractor shall respond to requests for repairs within N/A after a verbal request by the City.

5.21. Background Screening

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

5.22. Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

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

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

5.24. Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

5.25. Continuing Duty; Audit

Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

5.26. Variances and Exemptions

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

- Federal Homeland Defense Bureau.

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

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

If Contractor is required to access any City facilities without an escort, City badging is required. Contractor's default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section

arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

5.28. Employee Identification and Access

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

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

Unless otherwise provided for in the scope of work:

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

5.29. Key Access Procedures

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

5.30. Stolen or Lost Badges or Keys

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

5.31. Return of Badge or Key

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

the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

5.32. Badge and Key Fees

The following constitute the badge and key fees under this agreement, which shall be paid for at the Contractor's sole cost and expense, unless otherwise provided for in the scope of work. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Initial Badge Fee: \$55.00 per application

Replacement Badge Fee: \$55.00 per badge

Lost/Stolen Badge Fee: \$55.00 per badge

Replacement Key Fee: \$55.00 per key

Replacement Locks: \$55.00 per lock

5.33. Background Screening – Standard Risk

- A. **Determined Risk Level:** The current risk level and background screening required is STANDARD RISK LEVEL
- B. **Standard Risk Level:** A standard risk background screening will be performed when the Contract Worker's work assignment will:
 - 1. require a badge or key for access to City facilities; or
 - 2. allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
 - 3. allow unescorted access to City facilities during normal and non-business hours.
- C. **Requirements:** The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.
- D. **Contractor Certification; City Approval of Background Screening:** Unless otherwise provided for in the Scope, Contractor will be responsible for:
 - 1. determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
 - 2. for reviewing the results of the background check every five years; and,
 - 3. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,

4. Submitting the list of qualified Contract Workers to the contracting department.
5. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
6. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

6. Defense and Indemnification

6.1. Standard General Defense and Indemnification

Contractor ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

7. Insurance Requirements

7.1. Contractor's Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

7.2. Scope and Limits of Insurance

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

7.3. Commercial General Liability – Occurrence Form

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

7.4. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

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

- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

7.5. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability:

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

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

7.6. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Phoenix, Public Works Department, Procurement Section, 7th Floor, 200 W. Washington Street, Phoenix AZ 85034.

7.7. Acceptability of Insurers

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

7.8. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to City of Phoenix, Public Works Department, Procurement Section, 7th Floor, 200 W. Washington Street, Phoenix AZ 85034. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

7.9. Subcontractors

Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

7.10. Approval

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed, effective as of the Effective Date set forth above.

“City”

City of Phoenix,
A municipal corporation
Jeffrey Barton, City Manager

Felipe Moreno
By: _____

Felipe Moreno

Public Works Director

“Contractor”

Balar Equipment
a/an Heil Environmental

By: *Michael Neubauer* _____

Name: Michael Neubauer

Title: General Manager

Attest:

Debbie Aschfeld

City Clerk

Jul 1, 2024
Effective Date



APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

By: *Paul Li* _____
Print Name **Paul Li** Jun 28, 2024
Assistant Chief Counsel

CONFLICT OF INTEREST AND TRANSPARENCY FORM

(please complete, sign, and return with the submittal)

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.			
1. Name of person submitting this disclosure form.			
Michael Neubauer			
First	MI	Last	Suffix
2. Contract Information			
Solicitation # or Name: 24-FSD-028 OEM Parts and Service Contract			
3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)			
Balar Holding Corp; dba Balar Equipment			
4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.			
Scott Dols Brion Maguire Robby Dehart Michael Neubauer			
5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.			
<input type="checkbox"/> Subcontractors may be retained, but not known as of the time of this submission. <input type="checkbox"/> List of subcontracts, including the name of the owner(s) and business name: N/A			
6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.			
N/A			

7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a "conflict of interest" issue under City Code Section 43-34?

"An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award."

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
 I am aware of the following potential or actual conflict(s) of interest:

B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer's or employee's city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
 I am aware of the following conflict(s) of interest:



8. Acknowledgements

A.Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.

- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B.Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete. Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

Michael Neubauer

General Manager

PRINT NAME

TITLE

Michael Neubauer

6/3/24

SIGNATURE

DATE

Balar Holding Corp; dba Balar Equipment

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA

CONTRACTOR INFORMATION

(please complete and return with the submittal)

Company Name	Balar Equipment
Street/Mailing Address	11023 N 22nd AV
City, State, Zip Code	Phoenix, AZ 85029
Contact Person	Michael Neubauer - General Manager
Telephone Number	480 670 7830
Email Address	mneubauer@balar.com
Arizona Sales Tax No.	07-654469-A
City of Phoenix Sales Tax No.	02004547
Arizona Corporation Commission File No.	10196146
City's Vendor Registration ID No.	00002010

COSTS AND PAYMENTS

(please complete and return with the submittal)

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

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

Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City's servicing bank ("Bank"). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

NOTICES AND CONTACTS: Any notice, consent, or other communication required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, sent by email, deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

GENERAL COMMUNICATION INTENDED FOR PROPOSER:

Organization Name	<u>Balar Holding Corp dba Balar Equipment</u>
Attn	<u>Michael Neubauer</u>
Address	<u>11023 N 22nd AV</u>
City, State and Zip Code	<u>Phoenix, AZ 85029</u>
Telephone	<u>480 670 7830</u>
Fax	<u>N/A</u>
Email	<u>mneubauer@balar.com</u>

WITH A REQUIRED COPY TO:

Organization Name	<u>Balar Holding Corp dba Balar Equipment</u>
Attn	<u>Michael Neubauer</u>
Address	<u>11023 N 22nd AV</u>
City, State and Zip Code	<u>Phoenix, AZ 85029</u>
Telephone	<u>480 670 7830</u>
Fax	<u>N/A</u>
Email	<u>mneubauer@balar.com</u>

ACCOUNTS RECEIVABLE CONTACT: If different than above.

Name	<u>Karen Duffey</u>
Address	<u>11023 N 22nd AV</u>
City, State and Zip Code	<u>Phoenix, AZ 85029</u>
Telephone	<u>602 944 1933</u>
Email	<u>accounting@balar.com</u>

OPERATIONS CONTACT: If different than above.

Name Michael Neubauer
Address 11023 N 22nd AV
City, State and Zip Code Phoenix, AZ 85029
Telephone 480 670 7830
Email mneubauer@balar.com

INSURANCE CONTACT: If different than above.

Name Karen Duffey
Address 11023 N 22nd AV
City, State and Zip Code Phoenix, AZ 85029
Telephone 602 944 1933
Email accounting@balar.com

EMERGENCY 24-HOUR SERVICE CONTACT: If different than above.

Name Michael Neubauer
Address 11023 N 22nd AV
City, State and Zip Code Phoenix, AZ 85029
Telephone 480 670 7830
Email mneubauer@balar.com

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BALAR HOLDING CORP. DBA BALAR EQUIPMENT**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

The method and amount of compensation is in accordance with Section 3 of this agreement.

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 \$450,000 for the entire term of the Agreement.



**PRICING SUBMITTAL:
IFB 24-FSD-028 - ORIGINAL EQUIPMENT MANUFACTURER (OEM) MAINTENANCE REPAIR AND PARTS**

Item No.	Description	Unit of Measure (UOM)	Unit Price
1	Shop Hourly Labor Rate	Per Hour	\$142.00
2	Shop Hourly Labor Rate-Emergency/After Normal Bussiness Hours	Per Hour	\$201.00
3	On-Site Hourly Rate	Per Hour	\$170.00
4	On-Site Hourly Labor Rate-Emergency/After Normal Business Hours	Per Hour	\$201.00
5	Percentage (%) Mark up for Replacement Parts	Percentage	33%

List Manufacturer/Product Lines: Vac-Con; Schwarze; E.H. Wachs; PB Loader; Heil

*Supporting documentation must be submitted with every invoice for parts pricing.