CITY CLERK
ORIGINAL

C-10699
03/14/2016

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
UNITED REFRIGERATION INC.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 14 day of March, 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and United Refrigeration Inc., a Pennsylvania corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

A. On November 15, 2013, under the Strategic Alliance for Volume Expenditures (S.A.V.E.), the City of Phoenix Procurement Division entered into a contract with Contractor to purchase the goods and services described in the Air Conditioning/Cooler Equipment & Parts - Citywide- Requirements, Contract No. 137347 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.

B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.

C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.

D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

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

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of Exhibit B, purchases can be made by governmental entities from the date of award, which was November 15, 2013, until the date the contract expires on October 31, 2016, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be

extended beyond October 31, 2018. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until October 31, 2016. The City Manager or designee, however, may renew the term of this Agreement for 2 one-year periods until the Cooperative Purchasing Agreement expires on October 31, 2018. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

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

   A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit C.

   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 the Cooperative Purchasing Agreement, unless the City and Contractor agree to a different schedule, as provided in Exhibit D.

   B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed forty-five thousand dollars ($45,000) for the entire term of the Agreement.

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. 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 Ron Gouger
6210 W. Myrtle Avenue, Suite 111
Glendale, Arizona 85301
623-930-2647

and

United Refrigeration Inc.
c/o Bruce Menninga
302 E. Watkins
Phoenix, AZ 85004
602-268-9100

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

"City"

City of Glendale, an Arizona municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

United Refrigeration Inc.,
a Pennsylvania corporation

By: _____
Name: Bruce Menninga
Title: Branch Manager

ATTEST:

_____
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
UNITED REFRIGERATION INC.

EXHIBIT A

Air Conditioning/Cooler Equipment & Parts - Citywide- Requirements, Contract No. 137347

CONTRACT AMENDMENT

Date:	8/21/2015
Purchasing Contract #:	IFB14-037
SAP Contract #	P-1011-14 (4701000609)
City Clerk Contract #:	137347
Amendment Number:	3

CITY OF PHOENIX
Procurement Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: AIR CONDITIONING/COOLER EQUIPMENT & PARTS – CITYWIDE – REQUIREMENTS CONTRACT

Contractor: United Refrigeration

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

SECTION III – SPECIAL TERMS AND CONDITIONS

14. OPTION TO EXTEND

Contract is hereby extened for one year from November 1, 2015 to October 31, 2016.

CITY CLERK DEPT.
2015 OCT 21 PM 3:24

Buyer Name: Chuck Garvey

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Procurement Division.

Signature

Bruce Menninga Manager
Typed/Printed Name and Title

Date: 9/23/15

Deputy Finance Director/Jim Campion

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It does not need to be submitted to the City Attorney for approval unless the form of document is altered."

137347--0

CITY OF PHOENIX
Procurement Division

INVITATION FOR BID
IFB 14-037 (MH)

AIR CONDITIONING/COOLER EQUIPMENT & PARTS –CITY WIDE REQUIREMENTS CONTRACT

CONTACT PERSON
Mary Hammer
Procurement Manager
602-262-7793
Mary.Hammer@phoenix.gov

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Exhibit 1

Quarterly Vendor Spend Management Report

Please read this before continuing on to the bid document.

SOLICITATION RESPONSE CHECK LIST

Check off each of the following as the necessary action is completed.

☐ 1. All forms have been signed. All of Section V, Submittals, is included.

☐ 2. The prices offered have been reviewed.

☐ 3. The price extensions and totals have been checked.

☐ 4. Any required drawings or descriptive literature have been included.

☐ 5. The delivery information block has been completed.

☐ 6. If required, the amount of the bid surety has been checked and the surety has been included.

☐ 7. Review the insurance requirements, if any, to assure you are in compliance.

☐ 8. The specified number of copies of your offer has been included.

☐ 9. Any addenda have been signed and are included.

☐ 10. The mailing envelope has been addressed to:
City of Phoenix, Procurement, 8th Floor, 251 W. Washington Street, Phoenix, AZ 85003.

The mailing envelope clearly shows:
Your company name and address, the solicitation number, and the bid opening date.

☐ 11. The response will be mailed in time to be received no later than **September 13, 2:00** p.m. local Arizona time.

1. INTRODUCTION

The City of Phoenix invites sealed bids for the supply of Air Conditioning/Cooler Equipment & Parts. This will be a Citywide Requirements Contract, only offers meeting the minimum specifications and provisions requested herein will be considered. Any resultant contract(s) will be for a one-year period commencing upon council approval in accordance with the specifications and provisions contained herein.

This solicitation is available in large print, Braille, audio tape, or computer diskette. Please call (602) 262-7181/Fax (602) 534-1933 or TTY (602) 534-5500 for assistance.

2. SOLICITATION NOTICE

A notice of this solicitation was issued via the City's Vendor Management System (http://bizopps.phoenix.gov) using the following commodity codes. To receive any future notifications regarding this solicitation, companies and/or individuals must register with the City's Vendor Management System and select one or more of the following codes:

031-06	Air Conditioning and Heating: Central Units, and Parts and Accessories Not Individually Itemized
031-02	Air Conditioning Units, Portable (For Computer Rooms, Hospital Rooms, Sporting Events, etc.)
031-03	Air Conditioners: Commercial, and Parts and Accessories not Individually Itemized
031-04	Air Conditioners: Controlled Environment (For Computer Rooms, etc.), and Parts and Accessories not Individually Itemized)
031-13	Chillers, Heat Exchangers and Receivers
031-18	Coil and Fan Units, Air Conditioning
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031-26	Control Systems: Complete (For Automatic Temperature Control)
031-38	Evaporative Coolers
031-46	Filters and Filter Media, Evaporative Cooler
031-67	HVAC Equipment, Accessories and Supplies (Not Otherwise Classified)
740-59	Refrigeration Accessories and Supplies: Capillaries, Controls, Dryers, Expansion Valves, Refrigerant Oil, Sealants, Sight Glasses, Thermometers, Vibration Eliminators, etc.
740-63	Refrigeration Tubing and Fittings

3. SCHEDULE OF EVENTS

Bid Due Date: September 13, 2013 at 2:00 p.m.
Local Arizona Time

Bid Submittal Location: Calvin Goode Building
City of Phoenix Finance Department
Procurement Division
251 W. Washington Street, 8th Floor
Phoenix, AZ 85003

Pre-bid Conference Date: Monday, August 26, 2013 @ 1:00 P.M. (Local Time)
Calvin Goode Building

City of Phoenix Finance Department
Procurement Division
251 W. Washington Street, 8th Floor
Conference Room CCG827
Phoenix, AZ 85003

Written Inquiries Due Date: August 30, 2013

Pre-bid Location: Calvin Goode Building
City of Phoenix Finance Department
Procurement Division
251 W. Washington Street, 8th Floor
Conference Room CCG827
Phoenix, AZ 85003

City reserves the right to change dates and/or locations as necessary.

4. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA

Interested offerors may download the complete solicitation and addenda from http://phoenix.gov/business/contract/opportunities/goods/finnumb/index.html. Internet access is available at all public libraries. Any interested offerors without Internet access may obtain this solicitation by calling (602) 262-7181 or picking up a copy during regular business hours at the City of Phoenix Finance Department, Procurement Division, 251 W. Washington Street, 8th Floor, Phoenix, AZ.

5. PREPARATION OF BID

5.1 All forms provided in Section V, Submittal, must be completed and submitted with your bid. It is permissible to copy Section V forms if necessary. Erasures, interlineations, or other modifications of your bid shall be initialed in original ink by the authorized person signing the bid. No bid shall be altered, amended or withdrawn after the specified bid due time and date. The City is not responsible for offeror's errors or omissions. All time periods stated as a number of days shall be calendar days.

Any submission of an alternate term or condition to Sections I, II or III with your offer may result in rejection of your bid. This solicitation is deemed to be thorough and complete as to the city's needs.

5.2 It is the responsibility of all offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
B. Study and carefully correlate Offeror's knowledge and observations with the IFB document and other related data.

C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which an Offeror has discovered in or between the IFB document and such other related documents.

5.3 The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

5.4 Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that bids submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Bids offering less than the minimums specified are not responsive and should not be submitted.

5.5 Bid responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Bids submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.

5.6 If provisions of the detailed specifications preclude an otherwise qualified offeror from submitting a bid, a written request for modification must be received by the Deputy Finance Director at least seven (7) calendar days prior to the bid opening. The City may issue an addendum to this solicitation of any approved specification changes.

5.7 Prices shall be submitted on a % Discount off Public Published Mfg. Catalog or Price List. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

5.8 Prices offered shall not include applicable state and local taxes. The city will pay all applicable taxes. **For the purposes of determining the lowest cost, the city will not take the tax into consideration.** Taxes must be listed as a separate item on all invoices.

6. PRICING:

6.1 Price sheet

Offerors shall provide prices on the price sheet provided, that reflect a percentage discount off the most current Mfg., Public Published Price (the URL to the Mfg. website is acceptable) being offered. If more than one manufacturer is being submitted, the vendor must indicate the information for each manufacturer separately including the % discount being offered. All Price lists and/or URL's submitted with offers must include the actual Public Published Price.

6.2 Non-Responsive Pricing.

Cost-plus pricing **will not** be considered for award (with the **exception** of item 51 on the Price Sheet for Custom Sheet metals duct fitting). Offers that indicate "Call for pricing," or

similar will not be considered for award. In addition, line items in which no pricing was entered, N/A ,"No Bid", or similar was entered **will not** be considered for award.

7. ADDENDA

The City of Phoenix shall not be responsible for any oral instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum, which will be available at http://phoenix.gov/business/contract/opportunities/goods/finnumb/index.html or by calling (602) 262-7181. The offeror shall acknowledge receipt of all addendum by signing and returning the document with the bid submittal.

8. LICENSES

If required by law for the operation of the business or work related to this Bid, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

9. CERTIFICATION

By signature in the offer section of the Offer and Acceptance page, offeror certifies:

- The submission of the offer does not involve collusion or other anti-competitive practices.
- The offeror shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

10. SUBMISSION OF BID

Bids must be in the actual possession of the Procurement Division on or prior to the exact time and date indicated in the Schedule of Events. Late bids shall not be considered. The prevailing clock shall be the City Finance Department, Procurement Division's clock.

Bids must be submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

Offeror's Name
Offeror's Address (as shown on the Certification Page)
IFB Number
IFB Title

All bids must be completed in ink or typewritten. Include the number of copies indicated in the Submittal section.

11. WITHDRAWAL OF OFFER

At any time prior to the solicitation due date and time, an offeror (or designated representative) may withdraw the bid by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

12. BID RESULTS

Bids will be opened on the bid due date, time and location indicated in the Schedule of Events at which time the name of each offeror and the prices shall be read. Bids and other information received in response to the Invitation for Bid shall be shown only to authorized City personnel

having a legitimate interest in them or persons assisting the City in the evaluation. Bids are not available for public inspection until after award recommendation has been posted on the City's website.

A preliminary bid tabulation will be posted on the Procurement Division's website, http://phoenix.gov/business/contract/opportunities/goods/fintabsnumb/index.html within five (5) calendar days of the bid opening. The information on the preliminary tabulation will be posted as it was read during the bid opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the bids an award recommendation will be posted on the website. No further notification will be provided to unsuccessful offerors.

13. CLARIFICATIONS:

Upon receipt and opening of offers submitted, the City may request oral or written clarifications. Clarifications shall not afford the Offerors the opportunity to alter or change their offer.

14. AWARD OF CONTRACT

Unless otherwise indicated, award(s) will be made to the lowest responsive, responsible offeror(s) who are regularly established in the service contained in this solicitation and who have demonstrated the ability to perform the required service in an acceptable manner.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all bids or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is an offer to contract with the City based upon all terms, conditions, and specifications contained in the City's solicitation. Bids do not become contracts until they are executed by the Deputy Finance Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, unless any of the terms, conditions, or specifications are modified by an addendum or contract amendment.

15. MULTIPLE AWARDS

The City reserves the right to award to more than one (1) supplier. The City's decision will be based upon the ability to obtain the necessary supplies within the City's time requirements. The City's decision to utilize the multiple suppliers shall be final and conclusive.

16. CONTRACT AWARD

The City reserves the right to award a Contract by individual line items or alternatives, by groups of line items or alternatives, or to make an aggregate award of all line items, whichever is most advantageous to the City. If the Procurement Officer determines that the aggregate award of all line items approach is not in the City's best interest, any Offers submitted as being "all or none" shall be rejected.

17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST

The City reserves the right to disqualify any offeror on the basis of any real or apparent conflict of interest that is disclosed by the bid submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any offeror submitting a bid herein waives any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

18. OFFEROR'S COMPLIANCE WITH HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS

The Offeror's products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of the City representatives, the offeror shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training and records, permits, etc.) applicable to services requested.
- A list of all Federal, State and local citations or notice of violations (including but not limited to EPA, OSHA, Maricopa County) issued against the Offeror or their subcontractors including dates, disposition and resolutions.

The City further reserves the right to make unannounced inspections of the Offeror's facilities (during normal business hours).

19. SOLICITATION TRANSPARENCY POLICY

Beginning on the date the solicitation is issued and until the date the contract is awarded or the solicitation withdrawn, all persons or entities that respond to the solicitation for the automotive, truck and miscellaneous batteries for City owned equipment, including their employees, agents, representatives, proposed partner(s), subcontractor(s), joint venturer(s), member(s), or any of their lobbyists or attorneys, (collectively, the Offerors will refrain, from any direct or indirect contact with any person (other than the designated procurement officer) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who are not involved in the selection process

Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through **Mary Hammer**, conducted in person at 251 West Washington, Phoenix, Arizona, 85003, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **Offerors that violate this policy shall be disqualified.**

20. PROTEST PROCESS

Staff recommendations to award the contract(s) to a particular offeror or offerors shall be posted on the Procurement Division's website http://phoenix.gov/business/contract/opportunities/goods/fintabsnumb/index.html . Any unsuccessful offeror may file a protest no later than 7 calendar days after the recommendation is

posted on the website. All protests shall be in writing, filed with the Procurement Authority identified in the solicitation and include the following:

- Identification of the IFB or other solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Procurement Authority will render a written decision within 14 calendar days after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is completed.

CITY OF PHOENIX
Procurement Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

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 proposal 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 shall apply:

"A.R.S."	Arizona Revised Statute
"Offeror"	Any person or firm submitting a competitive bid in response to a solicitation such as an Invitation for Bid (IFB) or Request for Quotation (RFQ).
"Broker, Packager"	A firm that is not a manufacturer or regular dealer as defined
"Manufacturer's Representative"	herein and whose role is limited to that of an extra participant in
"Jobber"	a transaction, contract or project through which fund are passed in order to obtain services, materials, equipment or product.
"Buyer"	City of Phoenix, City Procurement Division staff person responsible for the solicitation.
"CBP"	U.S. Customs and Border Control.
"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/Agreement"	The legal agreement executed between the City of Phoenix, AZ and the Contractor.
"Contract Representative"	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.
"Days"	Means calendar days unless otherwise specified.
"Deputy Finance Director"	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).
"EPA"	Environmental Protection Agency
"FIFRA"	Federal Insecticide, Fungicide and Rodenticide Act
"FIS"	Federal Inspection Services.
"Manufacturer"	A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles or equipment required under the contract.
"Offer"	Means bid or quotation.
"Regular Dealer"	A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. An established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
"Solicitation"	Means an Invitation for Bid (IFB) or Request for Quote (RFQ).
"Suppliers"	Firms, entities or individuals furnishing goods or services directly to the City.
"Vendor"	A seller of goods or services.

2. CONTRACT INTERPRETATION

2.1 APPLICABLE LAW: This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in Maricopa County, State of Arizona.

2.2 IMPLIED CONTRACT TERMS: Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

2.3 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 shall prevail in the order set forth below:

A. *Special terms and conditions*

B. Standard terms and conditions
C. Statement or scope of work
D. Specifications
E. Attachments
F. Exhibits
G. Instructions to Offerors
H. Other documents referenced or included in the Invitation for Bid.

2.4 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 shall 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 shall 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 shall save and hold the City harmless with respect thereto.

2.5 SEVERABILITY: The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

2.6 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.

2.7 PAROLE 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 shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract shall 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.

3. CONTRACT ADMINISTRATION AND OPERATION

3.1 RECORDS: All books, accounts, reports, files and other records relating to the contract shall 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.

3.2 **PUBLIC RECORD:** All bids submitted in response to this invitation shall become the property of the City and become a matter of public record available for review pursuant to Arizona State law.

If an offeror believes that a specific section of its bid response is confidential, the offeror shall isolate the pages marked confidential in a specific and clearly labeled section of its bid response. The offeror shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the City Procurement Division will review the material and make a determination.

3.3 **CONFIDENTIALITY AND DATA SECURITY:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this agreement is confidential, proprietary information owned by the City. Except as specifically provided in this agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager, or his/her designee. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.

In the event that data collected or obtained by the Contractor in connection with this agreement is believed to have been compromised, Contractor shall notify the City Privacy Officer immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this section shall be deemed to cause irreparable harm justifies injunctive relief in court. A violation of this section may result in immediate termination of this agreement without notice.

The obligations of Contractor under this section shall survive the termination of this agreement.

3.4 **DISCRIMINATION PROHIBITED:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

Any supplier/lessee in performing under this contract 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 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. 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 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.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

3.5 **LICENSES AND PERMITS:** Contractor shall 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.

3.6 **ADVERTISING:** Contractor shall not advertise or publish new releases concerning this contract without the prior written consent of the Deputy Finance Director, and the City shall not unreasonably withhold permission.

3.7 **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 shall not be used or released by the Contractor or any other person except with prior written permission by the City.

3.8 **OWNERSHIP OF INTELLECTUAL PROPERTY:** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be considered work for hire and the City shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the City requesting the issuance of this contract shall own (for and on behalf of the City) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the City. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any other entity without the express written authorization of the City. If by operation of law, the Intellectual Property is not owned in its entirety by the City automatically upon its creation, then Contractor agrees to assign and hereby assigns to the City the ownership of the Intellectual Property. The Contractor agrees to take such further action and execute and deliver such further agreements and other instruments as the City may reasonably request to give effect to this section 3.8.

It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.

3.9 **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities shall 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 shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract

- 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.

The City shall 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 shall 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 Offeror's facilities (during normal business hours).

3.10 **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 or not they are 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.

3.11 **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 established 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.

3.12 **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 shall 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.

3.13 **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.

3.14 **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 shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

4. COSTS AND PAYMENTS

4.1 PAYMENT TERMS: The City shall make every effort to process payment for the purchase of material or services within 30 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 bid.

4.2 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.

4.3 LATE SUBMISSION OF CLAIM BY CONTRACTOR: The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.

4.4 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.

4.5 NO ADVANCE PAYMENTS: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.

4.6 FUND APPROPRIATION CONTINGENCY: The Vendor recognizes that any agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix 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.

4.7 MAXIMUM PRICES: The City shall not be invoiced at prices higher than those stated in any contract resulting from this bid. Offeror certifies, by signing this bid that the prices offered are no higher than the lowest price the Offeror charges other buyers for similar quantities under similar conditions. Offeror further agrees that any reductions in the price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The Offeror shall promptly notify the City of such price reductions.

4.8 F.O.B. POINT: All prices are to be quoted F.O.B. delivered, unless otherwise specified elsewhere in this solicitation.

5. CONTRACT CHANGES

5.1 CONTRACT AMENDMENTS: Contracts shall be modified only by a written contract amendment signed by the Deputy Finance Director and persons duly authorized to enter into contracts on behalf of the Contractor.

5.2 ASSIGNMENT - DELEGATION: No right or interest in this contract nor monies due thereunder shall be assigned in whole or in part without written permission of the City,

and no delegation of any duty of Contractor shall be made without prior written permission of the Deputy Finance Director, which may be withheld for good cause. Any assignment or delegation made in violation of this section shall be void.

5.3 **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Phoenix. The City reserves the right to obtain like goods or services from another source when necessary.

5.4 **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 shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director prior to the institution of the change.

6. **RISK OF LOSS AND LIABILITY**

6.1 **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall 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 shall not release seller from any obligation hereunder.

6.2 **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 shall 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 shall conform to the cancellation clause set forth in this document.

6.3 **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

6.4 **INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK.** The Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this contract.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Phoenix and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the seller that these covenants are irrevocable and perpetual.

6.5 **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall 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 shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract 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.

6.6 **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 project manager.

6.7 **DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to the building or grounds results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish to match existing material as approved by the City at Contractor's expense.

7. WARRANTIES

7.1 GUARANTEE: Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from date of acceptance by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it be shown that the defect was caused by misuse and not by faulty design.

7.2 QUALITY: Contractor expressly warrants that all goods or services furnished under this contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors, and assigns.

7.3 RESPONSIBILITY FOR CORRECTION: It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of any call back, Contractor agrees to give the City first priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.

7.4 LIENS: Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or his subcontractors in the performance of the work required under this contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make payment.

7.5 QUALITY STANDARDS OF MATERIAL AND SERVICES: If desired by the City, items/services bid shall be subjected to testing, dissection or analysis by a recognized testing laboratory or consultant selected by the City to determine that the material(s) submitted for bid conform to the bid specifications. The cost of testing, dissection or analysis shall be borne by the offeror.

7.6 REPAIR AND REPLACEMENT PARTS: Repair or replacement parts for existing equipment may be accomplished by the Contractor using other than original equipment manufacturers (OEM) parts. However, all parts or equipment furnished must be equal or exceed that of the original equipment manufacturer(s) in material and warranty.

7.7 WORKMANSHIP: Where not more specifically described in any of the various sections of these specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction or installation regularly furnished or required

for completion of the services. All work shall be executed by personnel skilled in their respective lines of work.

8. CITY'S CONTRACTUAL RIGHTS

8.1 RIGHT TO ASSURANCE: 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 (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

8.2 NON-EXCLUSIVE REMEDIES: The rights and remedies of the City under this Contract are non-exclusive.

8.3 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.

8.4 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 Offeror.

8.5 DEFAULT: In case of default by the offeror, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

8.6 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 shall 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.

8.7 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 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, except that the estimated quantity shown for each bid item shall not be exceeded by 10 percent without the express written approval of the Deputy Finance Director, Procurement Division. Any demand or order made by any employee or officer of the City of Phoenix, other than the Deputy Finance Director, Procurement Division or designated representative, for quantities in excess of the estimated quantities and dollar amounts shall be void if the written approval of the Deputy Finance Director was not received prior to the Contractor's performance.

8.8 **COST JUSTIFICATION:** In the event only one response is received, the City may require that the offeror submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the bid price is fair and reasonable.

8.9 **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 that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to City all rights and interests Contractor may have in the materials it prepares under this contract, including any right to derivative use of the material.

9. CONTRACT TERMINATION

9.1 **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 shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

9.2 **CONDITIONS AND CAUSES FOR TERMINATION:** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days 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 shall 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 shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

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 give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

9.3 **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.

1. **FOB POINT**
Prices quoted shall be FOB destination and delivered, as required, to all City of Phoenix Facilities and/or other public agencies locations.

2. **PRICE**
All percentage discounts submitted shall be firm and fixed for the initial one (1) year contract period. Thereafter, adjustments will be considered annually provided the adjustments are submitted in writing with thirty (30) days advance notice. All requests for adjustment shall be accompanied with written documentation from the manufacturer confirming the price increase. The City of Phoenix will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to Mary Hammer, Finance Department – Procurement Division, 251 West Washington, 8th Floor, Phoenix, Arizona, 85003. Price increases agreed to by any staff other than Deputy Finance Director are invalid. The contractor acknowledges and agrees that it will repay all monies paid a requested price increase unless the price increase was specifically approved in writing by the Deputy Finance Director.

3. **CONTRACT ORDER RELEASE**
Individuals specifically authorized by the Deputy Finance Director, Purchasing Division, will place orders directly to Contractor without a purchase order number but must provide a contract order release (COR) number to the Contractor at the time of electronic order placement. Contract order releases will not be mailed to the Contractor, but may be electronically placed via e-mail or City approved internet connectivity. Vendor invoices, packing slips, and delivery tickets must contain the City COR number. A written purchase order will not be issued.

4. **CONTRACT ORDER RELEASE**
Payment to be made from Vendor's invoice, and a copy of the signed delivery invoices, submitted to cover items received and accepted against the contract release. Invoices must contain the CR number. The invoice shall be included with each delivery or promptly mailed directly to the ordering department.

5. **METHOD OF INVOICING (VENDOR INVOICE)**
Invoice must include the following:

A. City purchase order number, requisition number, or contract agreement number.
B. Items listed individually by the written description and part number.
C. Unit price, extended and totaled.
D. Quantity ordered, back ordered, and shipped.
E. Applicable tax.
F. Invoice number and date.
G. Requesting department name and "ship-to" address.
H. Payment terms.
I. FOB terms.

6. **REPLACEMENT PARTS AVAILABILITY**
Contractor guarantees that a stock of replacement parts is locally available.

Contractor shall provide parts delivery, to include deliveries on Saturday. If special handling and/or freight is required, the Contractor will assume all charges.

7. **EMERGENCY TWENTY-FOUR HOUR SERVICE:**
Emergency twenty-four (24) hour service is to be provided by Contractor at no additional cost. Contractor shall provide an emergency contact person, with phone number, who is authorized to release material to the City during non-business hours, in the event of an emergency requirement. Any changes in contacts must be promptly submitted to the City.

8. **INDEMNIFICATION:**
(COMMODITY PURCHASE – COMMODITY SHIPPED)
Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

INSURANCE REQUIREMENTS: Vendor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall 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 minimum liability requirements provided that the coverage is written on a "following form" basis.

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

General Aggregate	$2,000,000
Products – Complete Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

The Vendor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this contract, the Contractor must provide to the City, within two (2) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed to City of Phoenix Finance Department, Purchasing Division, 251 W. Washington Street, Phoenix, Arizona 85003; emailed to: purchasing.admin@phoenix.gov ; or sent by facsimile transmission to (602)-534-1933.

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 above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Vendor shall 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 shall be sent directly to City of Phoenix, Deputy Finance Director/Purchasing, 251 West Washington, Phoenix, Arizona 85003. The City project/contract number and project description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified 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.

APPROVAL: Any modification or variation from the insurance requirements in this Contract must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

9. SECURITY

Violation of any of the following security rules will be sufficient cause for the City to forbid the person or persons from working in any City facilities. The security rules are as follows:

1. Employees shall keep the facility locked at all times.
2. Employees shall not allow unauthorized person to enter the facility (an authorized person is a person known by the Contractor to be an employee of the City, or a person known to be authorized by the facility manager, or person who can show proof of identification as proof of employment by the City).
3. Employees shall not allow guests in the City facility.
4. Employees shall not allow children into the City facility.
5. Employees shall not open any desk, file drawer or cabinets.

6. Employees shall not use the telephones except in emergencies.
7. Employees shall not use office equipment under any circumstances.

10. CONTRACTOR AND SUBCONTRACTOR WORKERS BACKGROUND SCREENING

Contractor agrees that all contractor and subcontractors' workers (collectively "Contractor's Worker(s))" that Contractor furnishes to the City pursuant to this agreement shall be subject to background and security checks and screening (collectively "Background Screening") at contractor's sole cost and expense as set forth in this section. The background screening provided by contractor shall comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening required in this section is necessary to preserve and protect the public health, safety and welfare. The background screening requirements set forth in this section 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, in addition to the specific measures set forth below, contractor and its contract workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this agreement.

BACKGROUND SCREENING REQUIREMENTS AND CRITERIA

Because of the varied types of services performed, the City has established three levels of risk and associated background screening. Because this is a Citywide Contract, the risk level and background screening required for this agreement will be determined by the individual departments.

1. **Minimum Risk Level**

A minimum risk background screening shall be performed when the contract worker:
(i) will not have direct access to City facilities or information systems; or
(ii) will not work with vulnerable adults or children; or
(iii) when access to City facilities is escorted by City's workers.

The background screening for minimum risk shall consist of the screening required by A.R.S.§ 41-4401 and following to verify legal Arizona worker status.

2. **Standard Risk Level**

A standard risk background screening shall be performed when the contract worker's work assignment will:
(i) require a badge or key for access to City facilities; or
(ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
(iii) allow unescorted access to City facilities during normal and non business hours.

The background screening for this standard risk level shall include the background screening required for the minimum risk level and a background check for real identity/legal name, and shall 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 (7) years from the contract worker's proposed date of hire.

3. **Maximum Risk Level**

A maximum risk background screening shall be performed when the contract worker's work assignment will:
(i) have any contact with vulnerable people such as children, youth, elderly, or

individuals with disabilities; or

(ii) have any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or

(iii) have unescorted access to City data centers, money rooms, or high-valve equipment rooms; or

(iv) have access to private residences; or

(v) have access to Homeland Defense Bureau identified critical infrastructure sites/facilities.

The background screening for this maximum risk level shall include the background screening required for the standard risk level, plus a sexual offender search, a credit check, and driving record search for the preceding seven (7) years from the contract worker's proposed date of hire. Contract workers who work directly with children or vulnerable adults are also subject to fingerprint verification through the Arizona Department of Public Safety as mandated by Phoenix City Code § 2-45.6.

CONTRACTOR CERTIFICATION; CITY APPROVAL OF MAXIMUM RISK BACKGROUND SCREENING

By executing this agreement, contractor certifies and warrants that contractor has read the background screening requirements and criteria in this section, understands them 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 such background screening requirements for the minimum and standard risk background screening as required. In addition, for maximum risk background screening, contractor shall furnish to **specific Citywide departments** for the City's review and approval of such background screenings for any contract worker considered for performing services under this agreement where human safety or facility security is classified as a maximum risk level. The subject contract worker shall not apply for the appropriate City of Phoenix identification and access badge or keys until contractor has received the City's written acceptance of the subject contract worker's maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the contract workers proposed by contractor for performing work under this agreement. A contract worker rejected for work at a maximum risk level under this agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.

TERMS OF THIS SECTION APPLICABLE TO ALL OF CONTRACTOR'S CONTRACTS AND SUBCONTRACTS

Contractor shall include the terms of this section for contract worker background screening in all contracts and subcontracts for services furnished under this agreement including, but not limited to, supervision and oversight services.

MATERIALITY OF BACKGROUND SCREENING REQUIREMENTS; INDEMNITY

The background screening requirements of this section are material to City's entry into this agreement and any breach of this section by contractor shall be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, contractor shall defend, indemnify and hold harmless the City for any and all claims arising out of this background screening section including, but not limited to, the disqualifications of a contract worker by contractor or the City for failure to satisfy this section.

CONTINUNING DUTY; AUDIT

Contractor's obligations and requirements that contract workers satisfy this background screening section shall continue throughout the entire term of this agreement. Contractor shall notify the City immediately of any change to a maximum risk background screening of a contract worker previously approved by the City. Contractor shall maintain all records and documents related to

all background screenings and the City reserves the right to audit contractor's compliance with this section.

CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS
A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

BADGE ACCESS PROCEDURES
An authorized City of Phoenix badge application form is available at the City of Phoenix Badging Office, 251 W Washington St., 2nd Floor, Phoenix, AZ 85003-1611. Each contract worker (as defined herein) who is furnishing standard risk (as defined herein) or maximum risk (as defined herein) services under this agreement shall submit to the City of Phoenix, Banking and Cashiering Division, 305 W Washington Street, 1st Floor, Phoenix, AZ 85003-1611:

(i) a fully completed and authorized City of Phoenix badge application form;
(ii) a check in the initial badge fee amount listed below made payable to the "City of Phoenix"; and
(iii) two forms of identification. One form of identification must be a government issued credential with an accompanying photograph. The second form identification must be a valid passport; military issued identification card; immigration and naturalized services identification card; social security card; or an original birth certificate.

After the receipt of the badge application and payment, the contract worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the contract worker satisfies the required background screening (as defined herein). The contract worker shall comply with all requirements and furnish all requested information within five (5) business days from initial submission of the badge application or the subject contract worker's badge application shall be rejected.

KEY ACCESS PROCEDURES
If the contractor worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by the contractor for each key issued. The key issue/return form is available and the completed form shall be submitted to the badging office at the address above.

STOLEN OR LOST BADGES OR KEYS
Contractor shall report lost or stolen badges or keys to their local police department and must obtain a police department report (PDR) prior to re-issuance of any lost or stolen badge or key. A new badge application or key issue form shall be completed and submitted along with payment of the applicable feed listed below prior to issuance of a new badge or key.

RETURN OF BADGE OR KEYS
All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) 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 shall 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 particular City facility(s); or upon termination, cancellation or expiration of this agreement.

11. CONTRACTOR'S DEFAULT; LIQUIDATED DAMAGES; RESERVATION OF REMEDIES FOR MATERIAL BREACH

Contractor's default under this section shall include, but is not limited to, the following:

(i) Contract worker gains access to a City facility(s) without the proper badge or key;
(ii) Contract worker uses a badge or key of another to gain access to a City facility;
(iii) Contract worker commences services under this agreement without the proper badge, key or background screening;
(iv) 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
(v) 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 (3) 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 shall constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the contractor shall be liable for and pay to the City the sum of one thousand dollars ($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 in the event that 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 in the event that contractor breaches this section. The parties further agree that three (3) breaches by contractor in this section arising out of any default within a consecutive period of three (3) months or three (3) breaches by contractor in this section arising out of the same default within a period of twelve (12) consecutive months shall 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.

BADGE AND KEY FEES

The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon thirty (30) days 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

12. SUSPENSIONS OF WORK

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

13. **PERFORMANCE INTERFERENCE**
Contractor shall notify the specific department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within twenty-four (24) hours. Contractor shall copy Mary Hammer, Procurement Manager in writing within twenty-four hours of any/all occurrences.

14. **OPTION TO EXTEND**
The City may, at its sole option, extend the Contract's term for additional periods of time such that the aggregate term of the Contract does not exceed five (5) years. In the event that the City exercises such right, all terms, conditions and provisions of the Contract in place immediately prior to the extension shall remain unchanged and continue to apply during the extension period unless otherwise expressly changed in a Contract Amendment as set forth herein.

15. **CONTRACTOR'S PERFORMANCE**
Contractor shall furnish all necessary labor, tools, equipment, supplies and all incidentals to perform the required services stated within the scope of work. 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 shall notify the Contractor.

The Contractor will have three (3) calendar days from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall 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.

16. **DISCOUNT**
All discounts shall be from the manufacturers most recent public published price list Catalogs(s), these catalogs may be available online therefore listing the URL address to the manufacturers website must be provided (published pricing must be shown on the manufacturers website or within the published catalog submitted with bid).

Discounts offered must be expressed as a single percentage (%) figure for each manufacturer or catalog(s). Offers containing chain or multiple discounts may be considered non-responsive.

17. **PUBLIC PUBLISHED PRICE LIST**
All Public Published Priced product catalogs/Price Lists shall be provided in either electronic or paper copy using properly identified, and dated as to issuance and effectiveness. Electronic copies of the catalogs are preferred. Offer may also include the URL address for each Public Published Price List.

Electronic Copy – **Internet connectivity is preferred.** If not available via internet, either compact disc (CD), digital versatile disc (DVD) or electronic media will be accepted, formatted to City software (Adobe Searchable PDF).

If necessary, the Offeror shall provide a release allowing the City of Phoenix the rights to install unlimited electronic copies of the Public Published Price List or catalog to the City's intranet website. Access to manufacturer's websites is acceptable in lieu of paper, CD, or DVD; however, access must be operable to the City during the term of agreement and must contain Public Published Price lists.

If only a printed format is available, a total of two (2) copies each of the manufacturer catalog shall be supplied.

Revised catalogs must be submitted to the City within 30 days of manufacturer effective date.

Contractor cover letter and Published Public Price catalog information must be dated, signed, and submitted to: Current IFB# 14-037, City of Phoenix Finance – Procurement, 251 West Washington Street, Phoenix AZ 85003, 251 W. Washington Street, 8th Floor, Phoenix, Arizona 85003 or email to the Finance Cognizant Buyer.

18. MATERIALS RECEIPT

Packing slips/delivery tickets authorized by the "Method of Ordering" paragraph shall include the following:

A. City's Purchase Order Number
B. Items listed individually by written description and part number
C. Items unit priced extended and receipt totaled, excluding taxes
D. Where discounts are applicable, unit prices are to be the contract "list prices" and applicable discount percent shown
E. Quantity delivered
F. Legible City of Phoenix employee signature, printed name and date on the page of the invoice where invoice is totaled, and
G. Multiple page packing slips/delivery tickets must be numbered.

19. PARTS EXCHANGE & RETURNS

Contractor expressly agrees to exchange on an equal dollar basis all unused parts of the same manufacturer and brand purchased during the contract period. Parts to be exchanged will be those parts which have become obsolete to the City. The City will be the sole judge of obsolescence. Returned parts shall be credited at the current City cost (at time of exchange) less a maximum 10% restocking charge. Parts returned shall be in their original packaging.

Stock clean ups will be made on an annual or biannual basis as needed. Copies of invoices will not be supplied for returns on stock clean ups.

Contractor shall issue credit for use against future purchases for the returned parts. The City shall not be obligated to accept exchange parts in full at time of return.

20. MISCELLANEOUS FEES

Additional charges for fuel surcharges, delivery & re-delivery charges, environmental fees, waste fees, shop supplies, freight and/or shipping/ handling and incidental or other miscellaneous charges will not be paid; these charges must be included in the solicitation submittal price.

21. WARRANTIES

Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from date of installation by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it be shown that the defect was caused by misuse and not by faulty design

22. 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:

A. 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 § 23-214, subsection A.

B. A breach of a warranty under paragraph A shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

C. 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 A.

23. COOPERATIVE AGREEMENT

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

A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on Contracts, "S.A.V.E." listing and "ICPA". Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City of Phoenix shall not be responsible for any disputes arising out of transactions made by other public entities who utilize this Agreement.

24. POST AWARD CONFERENCE

The recommended Contractor(s) may be required to participate in a Post Award Conference by the Finance Procurement personnel for the purpose of ensuring a complete understanding of the requirements.

A. Upon notification of an award the Contractor(s) will have ten (10) business days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in Section III – Special Terms subsection Insurance Requirements of this solicitation. (Note: Insurance requirements are non-negotiable).

B. If any of the above requirements are not met, the Contractor(s) submittal may be deemed non-responsive and the next lowest responsible offeror will receive low bid notification initiating the pre-award qualification process.

1. SCOPE

The City of Phoenix Finance Procurement department invites sealed Proposals for **Citywide Air Conditioning/Cooling Equipment & Parts – Requirements Contract**, to be provided to the City of Phoenix in accordance with the specifications and provisions contained herein. Additional rebates, specials, returns or product discounts offered by manufacturers are to be applied when they are directly attributable to this agreement.

1.1 Background

The purpose of this IFB is to establish a comprehensive Citywide term contract(s) for Air Conditioning/Cooling Equipment, Parts and incidentals (including custom sheet metal duct fitting) Contract (s) using a vendor supplied online catalog and electronic ordering system.

Vendors are strongly encouraged to offer a percentage discount off their entire online catalog.

1.2. The estimated annual dollar volume of products and equipment purchased under the proposed contract(s) may be approximately **$500,000. - $900,000 dollars annually.** This information is based on historical usage data; however, the bidder is reminded that this information is an estimated usage and estimated spend only. The City makes no guarantees as to the volume or dollars that will be spent under any resultant contract(s) and this contract will be used on an as needed, if needed basis. The City makes no guarantee as to actual spend under any resultant contract.

1.3 This contract is meant to be a comprehensive Air Conditioning/Cooling Equipment & Parts commodities contract (no service is authorized or will be paid for under any resultant contract). As stated above, there is no guarantee as to the exact products or quantities to be purchased under any future contracts. Such items sought in this contract include, but are *not* limited to:

OEM conditioning and Heating Equipment	**Motor compressor**	**Flexible/Custom Fabricated duct work**	**Valves, Driers**
OEM replacement parts	**Belts**	**Actuators and valves**	**Arma Flex pipe insulation**
Air conditioning and Heating equipment	**HVAC**	**Replacement parts pump**	**Contactors**
OEM repacement parts	**Relays, valves**	**Flexible duct**	**Thermostat guards**
Evaporative Coolers	**Motors, fractional HP/less than 1HP**	**Pumps and parts**	**Blowers, fan blades, bearings**
Compressor parts accessories	**Contactors, expansion valves**	**Solder products**	**Residential & Commercial temperature controls, valves**

Motors & Armatures, relays and capacitors	**Pressure gauges**	**ACR copper pipe and fittings**	**Degreaser, leak detectors, moisture control products**
Custom sheet metals, (i.e. duct fittings or other custom sheet metal products as it relates to this contract).	**Other Air Conditioning/Cooler Parts and Equipment that are not listed above**	**Tools used specifically for Air Conditioning & Cooler repair/installation**	

2. **EXCLUSIONS:**
Certain product categories, and specific items, which are covered by other mandatory contracts or are otherwise prohibited, shall be excluded from this contract. Upon award or during the term of the contract, the City as its sole discretion shall have the right to exclude additional products or product categories if determined to be in the City's best interest. Such changes shall be done in the form of a contract amendment, and shall become effective on the date specified in the amendment. Current exclusions include, but are not limited to:

- HVAC Filters
- Building Materials
- Contractor labor and installation.
- All tools not specific to Air Conditioning/Cooling Equipment functions.
- Solar items may be purchased under this contract; however, Customers shall have the sole discretion to procure such items through a separate solicitation if Customers determine such action would be more appropriate.

3. **METHOD OF ORDERING (ONLINE CATALOG AND ELECTRONIC ORDERING SYSTEM)**
Only Individuals specifically authorized by the Deputy Finance Director, Procurement Division, will place orders directly to Contractor without a purchase order number but must provide a contract order release (COR) number to the Contractor at the time of order placement. Contract order releases will not be mailed to the Contractor. Vendor invoices, packing slips, and delivery tickets must contain the City COR number. A written purchase order will not be issued.

3.1 **Online Catalog and Electronic Ordering System**
The Contractor **shall** make available an online catalog to allow authorized users to make purchase from this contract(s), the contractor(s) shall have a secured website for placing online orders.

The features and functions of any online ordering catalog created for use by the City under this contract shall include but shall not be limited to the following:

- Access by standard web browsers
- Product information such as unit of measure, item status, price, description, photos, MSDS sheets, etc.
- Item status inquiry functionality that provides stock availability
- Order tracking
- Help functionality

- Reflect current Mfg. Public Published Price List, product information, and specifications.
- Restricted to only those items that may be purchased under this contract by being identified as core items or are within the general product categories establish by this contract.
- Shall not include any items that are specifically excluded from this contract.

3.2 **Timeframe.** The "online catalog" capability shall be fully functional and available to all City of Phoenix locations within the first three months of the contract begin date.

3.3 **Cost.** The cost associated with the Contractor's set-up, maintenance and support shall be borne by the Contractor.

3.4 **Training.** The contractor shall provide onsite training to the City of Phoenix employees as necessary. Training shall be provided within 72 hours after request from department.

3.5 **Ease of Use:** The contractor shall provide easily understood (step by step standard operating procedures) written instructions to assist all City of Phoenix employees with registration and online ordering.

3.6 **Discount Offered.** The implementation and management of electronic ordering systems result in lower administrative costs for both the Contractor and the City, it is therefore requested that the Contractor offer an additional discount percent (%) for those who utilize the online system to make purchases under this contract.

4. PROMOTIONAL PRICING

4.1 The Contractor may conduct sales promotions, for specified periods of time, involving specific products or groups of products within the scope of this Contract. Sales promotions can include additional rebates, specials, product discounts offered by manufacturers, etc. When a sales promotion is offered, the Contractor shall submit the promotional pricing, in writing, to the ordering department's representative with the following:

4.1.1 The affected contract product or product groups;

4.1.2 For general promotions, the additional discount percentage or rebate amount; and for specific products, the promotional price vs. the existing contract price.

4.1.3 The start and end date of the sales promotion;

4.2 Promotional pricing shall be available to the City through the dates specified.

5. CONTRACTOR QUALIFICATIONS AND QUALITY ASSURANCE

5.1 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.

5.2 Contractor will not subcontract, use third party companies or use any other parties to perform these services without written authorization from the City. Should authorization for such be granted, use of any subcontractors or other parties shall not relieve, release or affect in any manner the Contractor's duties, liabilities or obligations under this contract.

5.3 If the City determines, for any reason, that the qualifications, actions or conduct of any particular 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 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.

6. CONTRACTOR SERVICES

6.1 The Contractor must offer an established, reliable, and responsive supply chain for the procurement of Air Conditioning /Cooler Equipment, Parts and related accessories. To do this, Contractor shall furnish all personnel, management, website(s), electronic or other type of ordering mechanism, published catalogs/price lists, technical parts/accessories information, supplies, parts, inventory, and shipping capabilities necessary to perform services required under the terms of this contract. A repeated failure to provide parts and accessories in a timely manner to the City's satisfaction would be sufficient cause to terminate any contract.

6.2 All warranty issues must be addressed within twenty-four (24) hours. Contractor will warranty all products supplied under this contract for a period of twelve (12) months against defects in material and workmanship. Freight charges, restocking fees from manufacturer, process and handling to include parts and labor will be borne by the Contractor. A "NO CHARGE" invoice for any warranty item that is replaced/exchange and must be provided detailing: failure, possible cause and replacements made.

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

6.3.1 The date the order was placed and by whom.
6.3.2 Description of the part and accessory (Manufacturer's Part Number, Catalog Date, Published List Price, % Discount and Discount Price).
6.3.3 Carrier shipping information (if applicable).
6.3.4 If order is a "will call" order, list the name of the individual picking up the order, the time and date the order was picked up, (verification that the individual showed there employee identification card is required).
6.3.5 The date the order is complete.
6.3.6 City reference order number.

7. PRODUCT AVAILABILITY:

Products must be available for ordering at the time of contract award and throughout the life of the contract. Changes to products that are available under any resultant contract cannot be made without prior written approval from the City.

8. ALTERNATIVE PRODUCTS AND FORCED SUBSTITUTIONS:

Alternative products shall not be shipped on orders without the prior approval from the ordering agency. Replacing any item with an alternative on a given order without prior consent of the customer shall be considered a forced substitution and shall not be permitted under this contract.

9. MINIMUM ORDER:

A minimum order quantity or charge shall not be applied to any order.

10. WAREHOUSE FACILITIES:

At a minimum the Contractor shall maintain 1 stocking warehouse facility located within the Metropolitan Phoenix area. This facility shall have a walk in service counter for will call pickups and over the counter sales. Warehouse shall include adequate volume stock items and adequate warehouse staffing.

11. USAGE REPORTS

The Contractor must provide the City of Phoenix, Finance Department, Purchasing Division with a quarterly usage report delineating the acquisition activity governed by the contract. The format of the report must be approved by the City and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit. Usage reports shall be created by the Contractor on a quarterly basis and will be due by the end of the month following the end of the quarter. (Exhibit 1)

11.1 Usage report quarters are as follows:

- January through March (Q1)
- April through June (Q2)
- July through September (Q3)
- October through December (Q4)

12. PALLETIZED DELIVERIES:

12.1 The City may need or receive palletized deliveries for orders. All palletized shipments shall be made at no extra charge to the City. The palletized shipments shall conform to the following requirements unless otherwise required by the Customer:

- Palletized on a single-face hardwood pallet, in good condition, with three (3), 2"x4" runners lengthwise the pallet Deck boards to be 3/4" minimum thickness 1 ½" maximum spacing
- Length: 44" minimum – 48" maximum Width: 36" minimum – 48" maximum
- Height: 5'7" including pallet
- Weight: 4,000 maximum gross pounds

12.2 Pallets are to be securely banded or shrink-wrapped and loads shall not exceed the size of the pallet. Pallets should be returnable to the Contractor if applicable.

12.3 The contractor shall contact the eligible agency to verify the above requirements are suitable to that agency's receiving guidelines and shall adjust the palletized delivery accordingly.

Offerors shall submit one (1) complete original offer and one (1) complete electronic copy of the offer (on a CD/DVD, flash drive or jump drive, Adobe searchable PDF format). **Please submit only Section V, do not submit a copy of the entire IFB document.** This offer will remain in effect for a period of 120 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so. Offeror shall submit Mfg., Public published priced catalogs or if a URL address is available which includes equal information you may include that information in lue of the actual catalog. All URL addresses provided MUST be accurate.

Failure to supply complete documentation below may result in your response being non-compliant:

Document	Original	Electronic	Copy
Section V- Submittal (Signed and Completed)	Yes	Yes	No
Published Price Lists (if not available on line)	Yes	Yes	No

Offers containing omissions or alternations of the electronic spreadsheet may be grounds for the City to consider that offer to be non-compliant.

1. **PAYMENT TERMS**

   Bidder offers a prompt payment discount of _____% _____ days to apply after receipt of invoice or final acceptance of the products, whichever is later. If no prompt payment discount is offered, enter 0 in the % space to indicate net 30 days, otherwise payment terms shall be 2% 20 days, net 30 days; effective after receipt of invoice or final acceptance of the products, whichever is later. Payment terms offering less than 20 days will not be considered in the price evaluation of your bid.

   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.

2. **DELIVERY**

   The Offeror shall have inventory and transportation capacities sufficient to meet citywide customer demand and contract delivery requirements as stated in this solicitation and/or other public agencies locations.

The Offeror shall provide inside and/or dock delivery to any/all locations at no extra charge, upon customer request. Inside delivery shall be defined as delivery of the product inside the customer's business, building, specific office floor or suite. All equipment, machinery or incidentals necessary for delivery shall be the responsibility of the offeror, this shall include removal of crates, pallets, cardboard, etc.

OFFER

TO THE CITY OF PHOENIX:
The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of this solicitation and any written exceptions in the offer.

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Taxpayer's Federal Identification No. _____

Bidder certifies that bidder has read, understands, and will fully and faithfully comply with this Invitation for Bid, its attachments and any referenced documents. Bidder also certifies that the prices offered were independently developed without consultation with any of the other bidders or potential bidders.

_____ _____
Authorized Signature Date

_____
Printed Name and Title

Company Name _____

Address _____

City, State and Zip Code _____

Telephone Number _____

Company's Fax Number _____

Company's Toll Free # _____

Email Address _____

Indicate on a separate sheet, if Purchase Order or Remit to addresses is different from above.

NOTE: Any assignment of proceeds must go through the City of Phoenix, Division of Accounts, formal assignment procedure. Please also refer to the Assignment Provision in the General Bidding Instructions and Conditions of Purchase.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon this solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX, a municipal corporation
David Cavazos, City Manager

City Clerk

James Scarboro, Deputy Finance Director

Approved as to form this 14 day of September, 2006

Awarded this _____ day of _____, 2013.

This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

	SECTION V – SUBMITTAL	**CITY OF PHOENIX** **Procurement Division** **251 W. Washington Street** **8th Floor** **Phoenix, AZ 85003** **Phone: (602) 262-7181**

Offerors shall submit one (1) complete original offer and one (1) complete electronic copy of the offer (on a CD/DVD, flash drive or jump drive, Adobe searchable PDF format). **Please submit only Section V, do not submit a copy of the entire IFB document.** This offer will remain in effect for a period of 120 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so. Offeror shall submit Mfg., Public published priced catalogs or if a URL address is available which includes equal information you may include that information in lue of the actual catalog. All URL addresses provided MUST be accurate.

Failure to supply complete documentation below may result in your response being non-compliant:

Document	Original	Electronic	Copy
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Published Price Lists (If not available on line)	Yes	Yes	No

Offers containing omissions or alternations of the electronic spreadsheet may be grounds for the City to consider that offer to be non-compliant.

1. **PAYMENT TERMS**

   Bidder offers a prompt payment discount of 1 % 30 days to apply after receipt of invoice or final acceptance of the products, whichever is later. If no prompt payment discount is offered, enter 0 in the % space to indicate net 30 days, otherwise payment terms shall be 2% 20 days, net 30 days; effective after receipt of invoice or final acceptance of the products, whichever is later. Payment terms offering less than 20 days will not be considered in the price evaluation of your bid.

   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.

2. **DELIVERY**

   The Offeror shall have inventory and transportation capacities sufficient to meet citywide customer demand and contract delivery requirements as stated in this solicitation and/or other public agencies locations.

The Offeror shall provide inside and/or dock delivery to any/all locations at no extra charge, upon customer request. Inside delivery shall be defined as delivery of the product inside the customer's business, building, specific office floor or suite. All equipment, machinery or incidentals necessary for delivery shall be the responsibility of the offeror, this shall include removal of crates, pallets, cardboard, etc.

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
UNITED REFRIGERATION INC.

EXHIBIT B
Award and Rate Sheet

	SECTION V – SUBMITTAL	CITY OF PHOENIX Procurement Division 251 W. Washington Street 8th Floor Phoenix, AZ 85003 Phone: (602) 262-7181

OFFER

TO THE CITY OF PHOENIX:
The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of this solicitation and any written exceptions in the offer.

Arizona Sales Tax No. REDACTED ____

Use Tax No. for Out-of State Suppliers ____

City of Phoenix Sales Tax No. ____

Taxpayer's Federal Identification No. ____

Bidder certifies that bidder has read, understands, and will fully and faithfully comply with this Invitation for Bid, its attachments and any referenced documents. Bidder also certifies that the prices offered were independently developed without consultation with any of the other bidders or potential bidders.

Bruce A Meininger — 9/13/13
Authorized Signature — Date

Bruce Meininger, Branch Manager
Printed Name and Title

Company Name	United Refrigeration
Address	302 E Watkins ST
City, State and Zip Code	Phoenix AZ 85004
Telephone Number	602-268-9100
Company's Fax Number	602-268-0540
Company's Toll Free #	877-670-6875
Email Address	Branch32@URI.com

Indicate on a separate sheet, if Purchase Order or Remit to addresses is different from above.

NOTE: Any assignment of proceeds must go through the City of Phoenix, Division of Accounts, formal assignment procedure. Please also refer to the Assignment Provision in the General Bidding Instructions and Conditions of Purchase.

	SECTION V – SUBMITTAL	CITY OF PHOENIX Procurement Division 251 W. Washington Street 8th Floor Phoenix, AZ 85003 Phone: (602) 262-7181

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon this solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX, a municipal corporation
David Cavazos, City Manager

City Clerk

James Scarboro, Deputy Finance Director

Approved as to form this 14 day of September, 2006

Awarded this 15th day of NOVEMBER, 2013.

This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

CITY CLERK DEPT.
2013 NOV 14 PM 3:41

Company Name United Refrigeration	Page 3 of 3
Bid Opening Date: Friday, September 13, 2013 Solicitation No. IFB 14-037 (MH)	

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
UNITED REFRIGERATION INC.

EXHIBIT C
Scope of Work

PROJECT

Purchase of refrigeration, air conditioning, heating parts and equipment for City of Glendale facilities on an as-needed basis.

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
UNITED REFRIGERATION INC.

EXHIBIT D

METHOD AND AMOUNT OF COMPENSATION

Method of payment is provided in Paragraph 3 of the Agreement

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed $45,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Purchase of refrigeration, air conditioning, heating parts and equipment from United Refrigeration's 2015 Catalog.