



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

**REGULAR MEETING
TUESDAY OCTOBER 9, 2018
6:00 P.M.**

**Council Chambers
202 N. State Route 89
Chino Valley, Arizona**

A majority of the Councilmembers may attend a private invocation in the Council Conference Room immediately prior to the Council meeting. No Town business will be discussed.

AGENDA

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE; ROLL CALL

2. INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

- a.** Presentation by Scott Freitag, Fire Chief, Central Arizona Fire and Medical regarding call volumes for January-June, 2018.

3. CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council on any issue within the jurisdiction of the Council that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4. RESPONSE TO THE PUBLIC

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

5. CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

- a.** Status reports by Mayor and Council regarding current events.

- b. Status report by Town Manager Cecilia Grittmann and/or Town staff members regarding Town accomplishments, and current or upcoming projects.
- c. Presentation of the Chino Valley Police Department's lip synch challenge video.

6. **CONSENT AGENDA**

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

- a. Consideration and possible action to accept the September 24, 2018 study session minutes. (Jami Lewis, Town Clerk)

7. **ACTION ITEMS**

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

- a. Consideration and possible action to approve a cooperative purchasing contract with Miracle Playgrounds in the amount of \$55,534.73 for the purchase of playground equipment, and approve purchase of a ramada from Royal Covers in the amount of \$9,997.00 for the Memory Park/Library Expansion. (Scott Bruner, Community Services Director)

Recommended Action: Approve a cooperative purchasing contract with Miracle Playgrounds in the amount of \$55,534.73 for the purchase of playground equipment, and approve purchase of a ramada from Royal Covers in the amount of \$9,997.00 for the Memory Park/Library Expansion.

- b. Consideration and possible action to approve the Databank IMX Statement of Work for the OnBase Implementation - Phase 1 of the Town's Electronic Document Management System (EDMS) system. (Spencer Guest, IT Manager)

Recommended Action: Approve the Databank IMX Statement of Work for the OnBase Implementation - Phase 1 of the Town's EDMS system.

- c. Consideration and possible action to direct staff and Council to dialogue with the community regarding a 20-year Roads Maintenance Plan and its funding per recommendation of the Roads and Streets Committee. (Frank Marbury, Public Works Director/Town Engineer)

Recommended Action: Direct staff and Council to dialogue with the community regarding a 20-year Roads Maintenance Plan and its funding per recommendation of the Roads and Streets Committee.

- d. Consideration and possible action to waive the bidding requirements and purchase a new 2018 John Deere 410L Backhoe Loader utilizing cooperative purchasing contract #032515-JDC through Sourcewell (formerly National Joint Powers Alliance). (Frank Marbury, Public Works Director/Town Engineer)

Recommended Action: Waive the bidding requirements and approve a Purchase Order Contract with RDO Equipment Co. to purchase a new 2018 John Deere 410L Backhoe Loader for a total amount not to exceed \$123,917.60 utilizing cooperative purchasing contract #032515-JDC through Sourcewell.

- e. Consideration and possible action to approve Agreement between the Greater Prescott Regional Economic Partnership (GPREP) and the Town of Chino Valley for FY 2018/19. (John Coomer, Economic Development Project Manager)

Recommended Action: Approval of the Agreement between the Greater Prescott Regional Economic Partnership and the Town of Chino Valley for FY 2018/19.

8. EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

- a. An executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position regarding a contract (concessionaire management agreement) with Prescott Sportsmen's Club related to management of the Chino Valley Shooting Facility that is the subject of negotiations. (Cecilia Gritman, Town Manager)

9. ACTION ITEMS RESUMED

After the Executive Session, Council will reconvene the Regular Meeting.

10. ADJOURNMENT

Dated this 4th day of October, 2018.

By: *Jami C. Lewis, Town Clerk*

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 636-2646 (voice) or 711 (Telecommunications Arizona Relay Service) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at <http://www.chinoaz.net/agendacenter> and in the Public Library and Town Clerk's Office.

CERTIFICATION OF POSTING

The undersigned hereby certifies that a copy of this notice was duly posted at Chino Valley South Campus, Chino Valley Post Office, and Chino Valley North Campus in accordance with the statement filed by the Town Council with the Town Clerk.

Date: _____ Time: _____ By: _____
Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

6.a.

Meeting Date: 10/09/2018

Contact Person: Jami Lewis, Town Clerk
Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type: Consent

AGENDA ITEM TITLE:

Consideration and possible action to accept the September 24, 2018 study session minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:

Accept the September 24, 2018 study session minutes.

Attachments

September 24, 2018 study session minutes

DRAFT

MINUTES OF THE STUDY SESSION OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY SEPTEMBER 24, 2018
7:30 A.M.**

The Town Council of the Town of Chino Valley met for a Study Session in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, SEPTEMBER 24, 2018.

Present: Mayor Darryl Croft; Vice-Mayor Lon Turner; Councilmember Mike Best; Councilmember Cloyce Kelly; Councilmember Corey Mendoza; Councilmember Jack Miller

Absent: Councilmember Annie Lane

Staff Present: Town Manager Cecilia Gritman; Economic Development Project Manager John Coomer; Finance Director Joe Duffy; Human Resources Director Laura Kyriakakis; Police Chief Chuck Wynn; Police Lieutenant Vince Schaan; Public Works Director/Town Engineer Frank Marbury; Community Services Director Scott Bruner; Water Resource Consultant Mark Holmes; Customer Service Manager JoAnn Brookins; Town Clerk Jami Lewis (recorder); Administrative Technician Kathy Frohock (videographer)

1) CALL TO ORDER; ROLL CALL

Mayor Croft called the meeting to order at 7:42 a.m.

2) Review and discussion regarding a possible May 2019 special election:

a) Roads Maintenance Plan property tax ballot measure. (Frank Marbury, Public Works Director/Town Engineer)

Mr. Marbury reviewed the following:

Existing Road Network

- Chino Valley encompassed 64 square miles with 153 miles of road.
- There were 48 miles of arterial Roads and 105 miles of residential and rural streets.
- There were approx. 20 miles of dirt roads, 16 miles of gravel roads, 78 miles of chip sealed roads, and 39 miles of asphalt roads.
- State Route 89 was maintained by Arizona Department of Transportation (ADOT).
- Chip seal and asphalt were the Town's two main types of road surfaces.

Pavement Preservation

- *Road maintenance tool box:* Maintenance treatments included—in order of least expense—fog seal, crack fill, modified fog seal, single and double chip seal, slurry seal, microsurfacing, cape

seal, thin overlay, overlay, mill and overlay, and reconstruction. Per mile, chip sealing was \$35,000-\$50,000, overlay was \$150,000-\$200,000, mill and overlay added \$100,000, and rebuilding was \$1.5 million-\$6 million depending upon the road.

- *Preservation and rehab strategies:* Pavement preservation theory was to keep the good roads good. Roads were designed to last 20 years or more. If a road could be rejuvenated or seal coated when the road was in good shape, the road would stay good at a cheaper cost than if it deteriorated and required a full reconstruction.
- *Repair and maintenance strategy:* Use seal coats as much as possible for cost savings; heavily traveled roads needed more expensive asphalt treatments because of heavy traffic and heavy loads; and critical roads such as Road 2 North, Reed Road, and some of the numbered streets needed more reconstruction.
- *General repair strategy:* Treat arterials and collector Roads with a mixture of overlays and seal coats; treat residential roads with seal coats; and as the seal coat life cycle could be stretched to about seven years in Arizona, address every road within the first seven years and then on average every seven years.

Pavement Management Program (PMP)

- A PMP was an asset management program wherein roads were inventoried, the conditions assessed, maintenance treatments determined, and annual funding assessed. It was computer-based but relied on input from visual assessments or vehicle sensors.
- If the Town developed a PMP, it would be a five to seven-year capital improvement and strategic maintenance plan that would be reviewed through the Roads Committee and approved by the Council on an annual basis.
- The estimated cycle would be about 20 years because of the typical lifespan of road surfaces. Estimated costs per year of a Town PMP were: \$250,000 for arterial, \$175,000 for local streets, \$30,000-\$50,000 for dirt or gravel, plus allowances for heavy rehab on heavy-use roads, totaling \$1.6 to \$1.7 million per year or \$33.5 million for 20 years.

Council and Mr. Marbury further discussed the following:

- *State Route 89:* The total 153 miles of road did not include the highway.
- *Determining road surfaces:* Each road surface would be customized, with the overlay used on each road dependent on the situation of a particular road. For example, chip sealed roads worked best on longer straighter roads, while slurry and micro surfaced roads worked better on neighborhood streets.

Finance Director Joe Duffy reviewed the following:

- *Annual HURF budget:* \$400,000 of the approximately \$920,000-\$950,000.00 was used for roads. The remainder covered salaries and road crew expenses and work. 90% of the current roads maintenance funding came from HURF with a small percent from the general fund.
- *Property tax proposal:* The Roads and Streets Committee was recommending a two percent property tax, as a one percent tax would not keep up, a 1.5% tax would only maintain the roads as they currently existed, and a 2% tax increase would actually improve the roads.
- *Property tax calculation:* On average, the assessed value of a Chino Valley home was approximately 50% of the home's market value. The Town's assessed property included 255 commercial properties, 2,202 vacant parcels 3,535 residential lots, and 909 non-primary residential lots. Residential properties would pay on average \$230 more annually with a 2% tax.
- *Property tax use limits:* Said property tax would be used exclusively for road maintenance and

construction. Funds would not be used for salaries and wages, services and supplies, and overhead costs.

- *Budgeting:* Tax monies would be accounted for in a separate fund. Staff would provide an annual report to the Town Council and be made available on the Town website detailing how the funds were used and showing that the Town had complied with the ballot measure. The Roads and Streets Committee recommended the tax be implemented for 20 years.
- *Comparison with other entities:* Compared to the three other local entities with regard to the number of roads, budgets, and expenses per road mile, the Town was significantly lower; but if the PMP program was adopted and a 2% property tax was implemented, it would be close to the other communities and allow the Town to properly maintain the roads and keep them in good shape.

Council and staff further discussed the differences between HURF funds and tax funded activities:

- With the tax dollars, the street crews would be less involved in rehab work and more involved with every day issues such as signage, maintaining rights-of-way, filling pot holes, and cleaning out drainage ways. These day-to-day expenses and salaries would come exclusively from HURF funds.
- Concerns had been expressed that the increase in funds available to the Town would increase the work load but the money would not be available for salaries and wages. The actual road maintenance and improvements would be performed by contractors, not Town employees. Thus, no additional work load would be incurred by staff.

b) Utility Question ballot measure. (Cecilia Grittmann, Town Manager)

Ms. Grittmann reviewed the following:

- With the possible ballot measure on the road maintenance tax, it could be a good idea to address this issue at the same time.
- The town had been researching the purchase of private water companies in the Town. State law provided that "before any acquisition of any plant or property rendered by a public utility shall be undertaken, the acquisition shall be authorized by the affirmative votes of the majority of the qualified electors."
- The Town asked the voters about this in 1993 and 2000. The 1993 ballot measure failed, but the 2000 measure passed 367 in favor and 140 opposed. The approved ballot measure asked the voters about the Town being authorized to engage in any public utility business.
- Subsequently, a 2012 Court of Appeals case between Marana and Pima County resulted in a ruling that such voter authorization needed to be specific to the system to be acquired.
- If Council chose to put this item on the May ballot, they would work with the Town's attorney to write language that would not limit the Town to just Chino Valley water companies, but anything within the surrounding area. The Council would have to determine the scope and area to consider, and each individual entity that the Town had an interest in must be stated on the ballot measure.

As there was no money involved and as there would be no reason to hold two special elections, Council favored including this item on the May ballot.

c) Election communication plan. (John Coomer, Economic Development Project Manager; Jami Lewis, Town Clerk)

Mrs. Lewis reviewed the legal requirements and Town approach for a May special election:

- November: Notice must be placed on the Town website 60 days before the Council voted to put the proposal on the ballot.
- January: The call of election must be done 120 days before the election and was scheduled for January 8.
- February: Pamphlet language was due to the printer and ballot language was due to the County.
- April: The pamphlet must be mailed out no later than April 21.
- May: The election date was May 21 and would be vote-by-mail balloting. The County would maintain two physical voting places at their administrative offices for those that needed to vote early.
- October-December: Legal election materials, outreach materials, and ballot and pamphlet language will be developed.
- January-May: Community outreach will take place.
- New laws affecting election: Due to new campaign finance laws, if there were any challenges, complaints or possible violations with regard to campaign financing, a second legal team might need to be hired by the Town.

Mr. Coomer reviewed staff's communication plan:

Phase 1 – Development

- This phase involved holding dialogue sessions with targeted individuals and groups, such as business owners, long-time residents, developers, and other stakeholders to obtain input and comments. Sessions will include eight to ten people dialoguing with the town manager, mayor, staff members and/or councilmembers. Questions, concerns, and suggestions will be added to a Frequently Asked Questions (FAQs) document. Some session members might agree to become spokespersons.
- Sessions should begin as early as October. Staff will hold meetings in such a way to reach as many people as possible at different times and places. A telephone survey could also be useful.
- HURF fund expenditures would fall into a FAQ category and the Town should spend time researching any type of valid question a community member might have and include those questions on the FAQ.
- As public employees, no staff member could promote the ballot measure, but they could educate and share the facts with the community.

Phase 2 – Deployment

- This phase was for public presentations and education.
- Presentations will be made at group meetings, such as Veterans group, Rotary Club, Police Foundation, Town Committees, and staff members.
- The informational campaign could include mailers, newspapers, or any free publication that was delivered to a house (Chino Valley Review, HOA newsletters, etc.) or any publication that was written to a targeted group. What was not as effective were Public Service Announcements through radio. The most important venue would be social media.
- One idea to include in educational materials is to demonstrate how the Town was different from other communities by showing the number of dollars spent per road mile per citizen.

Council, Mrs. Lewis and Mr. Coomer discussed the following:

- Any presentation should first include the water issue, then delve into the more complicated road

issue. Presenters needed to ensure that voters were not confused by the two issues.

- While on duty, employees should only give facts regarding the ballot issues. Off-duty, they could offer opinions. Council asked Ms. Lewis to check on how that would affect the Police Officers Association should they desire to form a political committee.
- Staff intended to use the Home Rule outreach model when developing the brochure, website powerpoints, and any public communications. A simple general message must be developed.
- Council asked Mr. Marbury to research how the roads issue would affect subdivisions that did not have town-maintained roads, such as Country West Mobile Home Park. FAQs needed to address these areas, as well as private easements and ingress and egress roads that would not be included in the roads maintenance plan.
- The Town Council would be involved in the entire process including the development of the pamphlet and the language used.
- The Town Council needed to decide on the tax percentage increase before the communication process began. A recommendation for the percentage could be scheduled at the first Town Council meeting in October specifying that the Roads and Streets Committee recommended a 2% increase to the property tax rate.

Mayor Croft recessed the meeting at 8:58 a.m. and reconvened it at 9:11 a.m.

3) Review and discussion regarding water resource matters:

a) Water 101 overview. (Mark Holmes, Water Consultant)

Mark Holmes reviewed the following:

Water Resources Overview

- *Prescott Active Management Area (AMA)*: Chino Valley was within the Prescott AMA wherein grandfathered groundwater rights were quantified and regulated. These water rights were highly regulated due to the fact that groundwater was being pumped faster than it naturally or artificially recharged into the aquifer or the aquifer was not in a sustainable water usage condition. Within the AMA, new development must obtain a 100-year assured water supply.
- *Exceptions* to these existing water rights to obtain new groundwater within the AMA included service area rights (water companies); new ground or pumping permits under for uses like mining operations, road construction or general industrial use; and exempt wells for domestic purposes, livestock or small commercial or industrial uses.
- *Doctrine of Reasonable Use*: Outside the AMA, there were no ground water rights and there were limited regulatory devices in effect for adequate water supply programs. Reasonable use meant that as long as there was reasonable use of the landowners' property, neighboring properties had no claim for damages even if the groundwater withdrawal adversely affected water levels under the neighbor's property.
- *The Prescott AMA* was approximately 450 square miles and all three of the municipalities within the AMA must abide by strict regulatory compliance and codes. There was a small piece of Chino Valley north of the Prescott AMA that was exempt from compliance. It was comprised of two subbasins: Little Chino to the north and the Upper Agua Fria to the south. Chino Valley and Prescott were primarily in the Little Chino portion and Prescott Valley was mainly in the Upper Agua Fria portion but all three municipalities were pumping water from the Little Chino Subbasin and were currently in an overdraft situation.
- *Groundwater rights*:
 - Irrigation Grandfathered Right – Confers the right to irrigate specific plots of land that had been irrigated between 1975 and 1980. Land without the irrigation grandfathered right

may not irrigate with groundwater.

- Type I Non-Irrigation Right – Associated with land permanently retired from farming and converted into non-irrigation right (e.g.: converting to an industrial use or a subdivision).
- Type II Right – Can only be used for non-irrigation (e.g.: industry, livestock water, golf courses) and equals the maximum amount pumped for any one year between 1975 and 1980.
- Service Area Groundwater Right – Authorizes cities, towns and private water companies to withdraw water to serve their customers. ADWR preferred this right in order to reduce the number of independent wells, so that they could instill water conservation requirements, future conservation requirements, and other specific restrictions on how the water was provided to the customers.

Chino Valley's Water Portfolio

- *Irrigation Grandfathered Rights (IGFRs)*: The Town acquired IGFRs with the purchase of Old Home Manor. The IGFRs were converted into assured water supply credits, most of which have been allocated to several developments within the Town requiring a 100-year assured water supply. Only a small amount of credits remained available for use.
- *Non-irrigation rights*: The Town had 29.8-acre feet per year of Type I non-irrigation water right and 32.8 Type II non-irrigation right. The Type I rights were being used at Old Home Manor, ballfields, and other land-based uses.
- *Cost of water*: In May 2018, he and Council discussed the ordinances created to determine the cost of an assured water supply credit—a one time purchase of one acre-foot per year—from water within the AMA, which was \$25,000 per acre foot. Water derived from outside the AMA was \$45,000 per acre foot, as it would have to be transported into the AMA.
- *Renewable water supply*: The Town's only increasing renewable assured water supply was reclamation through the sewer collection system, and the Town may decide to sell the credits to a development that will generate wastewater that is put back into the ground and reused.
- *Recharge credit policy*: The Town did not currently have a policy or guidance on who its future development partners would be, but issues to consider in the decision process of such policy were:
 - Current Town strategic and master plans.
 - Developments that would use the water and give most back to a sewer collection and recharge system.
 - Developments that would consume the water and ship the reclaimed water outside the Town, wherein the Town would get very little back as part of the renewable supply.
 - The type of developers the Town would want to partner with and allow access to the Town's water portfolio for either reclaimed or other water supply, as the water supply was very limited.
- *Assured Water Supply*: A condition affirming that a new subdivision had a water supply sufficient for 100 years to the satisfaction of the Arizona Department of Water Resources (ADWR).
- *Subdivision*: Real Estate Law defined this as a land divided into six or more parcels with at least one parcel or lot having an area of less than 36 acres. The Town's definition differed from the State's and it was possible for the Town to have what they classified as a subdivision not be required to provide a certificate of assured water supply. Such subdivision would use the Service Area Right. Apartments were also exempt from the State's definition of Subdivision regardless of the size. If lots sold in OHM met the State's subdivision definition, it would need an assured water supply certificate. Leasing the land would not meet the definition and would be exempt from the assured water supply. Land subdivisions that created parcels all of which were larger than 36-acres were classified as un-subdivided land and did not require assured water supply.

- *Certificate of assured water supply:* Two ways to meet this requirement were (i) Obtain a certificate of assured water supply issued by ADWR—this process was costly to the land owner, could take up to two years, and the Town had no say in the process; or (ii) The Town could become a Designated Water Provider and land owners would negotiate directly with the Town with no State involvement. Properties that were in the Town of Chino Valley but connected to the Prescott water supply, would claim the City of Prescott as their official water supplier despite being the Town of Chino Valley city limits.

Becoming A Designated Water Provider

- *Requirements to demonstrate to the State included:* (i) Physical water availability that would not impact other well owners in the AMA; (ii) Legal water availability; (iii) Continuous availability for 100 years; (iv) Financial capability to build the proper infrastructure to serve the area and to treat the water; (v) Meeting water quality standards; and (vi) Conservation management plans and goals, including Safe Yield.
- *Benefits:* Becoming a designated water supplier would allow the Town to make its own decisions on development, save land owners a considerable amount of time and cost, and was a much more efficient and effective way for the Town to control its destiny.
- *Importation permit:* The Town owned many acres at the lower end of the Big Chino and ADWR had issued a permit to the Town to import water into the AMA. If the Town were able to pump that water into Chino Valley, it would significantly change the Town's water issue. It also may require the Town to be designated a provider because they would have a legal, much larger water supply that was continuous. The available pumping supply was 18,000-acre feet every year for 100 years.
- *Mitigation:* Drawing water from the Big Chino would still require mitigation of the impact of water withdrawal, which would most likely require reclaimed water, the Town's only supply of water, being put back into the ground.
- *Dry Lot Subdivision:* These lots were allowed under the State, but the development would not acquire the water rights. Instead, each home owner would use an exempt well, but the State would still govern the water supply and property owners must still assure a 100-year physical supply and safe drinking water standards.
- *Town's water rights:* All groundwater was considered non-renewable, while surface and reclaimed water was considered renewable. Two of the Town's rights that could be used for development were: (i) Renewable effluent developed through sewer collection, treatment and recharge project, currently about 284-acre feet per year; and (ii) Big Chino historically irrigated acres (HIA) of 445-acre feet per year for 100 years. The Town did not yet have the ability to import HIA water but it had the ability to use its affluent towards development projects.

Future Challenges:

- *Limited supply:* The Town service area could continue to expand and serve non-subdivision developments of five or less lots, but there was small and limited amount of water rights available within the Prescott AMA.
- *Importation:* Prescott and Prescott Valley were looking at taking HIA water as well and would also be required to mitigate the effects of any water removal. The Town had the only permit issued by the State before they changed the permit process rules and it could sell this water to another community or anyone else. Ideally, the three communities should share the cost of a pipeline to mitigate costs.
- *Contamination:* Contamination was a big issue in Arizona. The Town could explore expansion of the wastewater treatment and recharge system to ensure that wastewater would not contaminate the aquifer.

- *Designated water provider:* If the Town could successfully import HIA water from the Big Chino, it would be a new 100-year water supply and could qualify the Town as a designated water provider.
- *Overdraft:* The Prescott AMA was in overdraft condition, with water being pumped at more than twice or possibly thrice what was naturally and artificially coming back into the ground. Overdraft has or will impact home owners and require wells to be deepened and in some instances, lands had permanently gone dry and property values cut in half. Being a water provider in an overdraft situation would help these residents.
- *Exempt wells:* Due to the number of exempt wells in high density areas, the Town would have a difficult time placing its wells in the high-density areas.
- *Private septic systems:* These were proliferating as much as exempt wells and in higher density areas of six plus septic systems per acre, they created water quality issues.
- *Service area expansion:* Through friendly acquisitions, the Town may be able to expand its service areas.

Integrated Water Master Plan

- *Integrated water master plan:* This included four master plans for water resources, water system, wastewater, and reclaimed water, which addressed issues such as water infrastructure, HIA pumping, treatment and delivery, transmission, reclamation, sewer collection, various basins, reclamation plants, mitigation and reclaimed water supply.
- *Master plans:* These types of plans use general plans, zoning population projections, and growth centers to project current, near, and future challenges and the best approach for overcoming those challenges; identification of needed capital projects, financing, timing, impact fee studies, equitable rate studies, and water conservation efficiency standard issues.
- *One-Water philosophy:* This new philosophy considered all water in the water cycle as equally valuable whether black, grey, potable, waste, reclaimed, storm, salty, or contaminated, as all could be treated and used for the purposes designed for it.
- *Strategic planning:* Timing was critical in financial and capital improvement plans to provide for rate stability, capital needs, and future investments. Master plans may provide information for further refining codes and ordinances for better water management and engagement with land development interests that match other strategic town objectives. Following these plans would ensure the highest level of service with the lowest price to the customer and allow control of the future with smart and sustainable growth. Due to the cost to develop such plans, they could be phased in.

Council, Mr. Holmes, and staff discussed the following:

- *2025 Safe Yield:* If safe yield was not met, nothing would happen because there were no teeth to the policy and the overdraft condition would continue to increase. Exempt wells, municipalities, and agriculture all impacted the aquifer, and the water table dropped every year. ADWR preferred all users to be on a municipal system for conservation reasons.
- *Agricultural uses:* ADWR was not trying to reduce agricultural use but was incentivizing conversion from agricultural water use to municipal and industrial. Farming operations from outside Arizona coming into the state were affecting water use.
- *Importation:* The Town's HIA water was about eight to ten miles away from the Town. Several years ago, it was priced at approximately \$15 million just to get the water into Town and did not include the reclamation lines back into the aquifer. The law allowed for water to be put in the ground in one area and be recovered in another area.
- *Deficits:* Central Arizona Project (CAP) lakes were at near record lows and due to a calculation error when created, Lake Mead loses 1.2 million acre feet per year. Groundwater was drought

proof but it was not forever water because it was not renewable. If nothing is done, this will be a big issue for future generations. The City of Prescott did not need to mitigate for water taken out of the AMA because they were grandfathered into the system.

- *Water table:* As the water table moved eastward, more and more exempt wells will go dry and more people will be hauling water every year. The Town may want to expand their infrastructure every year to accommodate those properties but it will be expensive and the number of customers may not be in high density. The Town should look at the planning stages and work from higher density areas to lower density areas. The Town may need a second water hauling station.
- *Water master planning:* The Town may want to concentrate more time on water management plan issues than on the OHM industrial park and where funds should be invested in the community. Master planning would also be beneficial when working on road infrastructure because it would be cheaper to add sewer and water infrastructure while working on the roads. It would be important to look at the five-, ten- and twenty-year horizon or longer. The total cost for all plans was \$800,000 to \$1.2 million, but they could be done in phases of \$100,000 to \$200,000.
- *Reclamation:* The Town was in a key position if it could plan its part in importation and recharge accordingly. Ideally, it would find partners willing to finance part of the infrastructure. The Town's location was an engineering dream because the flow of the basin was north, the Big Chino flow was southeast, and the two met at Sullivan Lake. A regional reclamation center at Sullivan Lake would be ideal, wherein reclaimed water could be managed to go toward mitigation for all three cities and reducing the overdraft condition.
- *Budget:* Council will hold a study session in January to review the upcoming budget and water was the next big issue for Council to review.
- *Privatizing:* Privatizing utilities could be complicated, as the Town would still have to deal with customer issues and would lose control of overall systems, since the goals of a private company might conflict with the Town's.

b) Recharge credit policy. (Mark Holmes, Water Consultant)

Mr. Holmes related that Council needed to discuss to whom to sell reclaimed water, HIA, or retired IGFRs. Possible customers included: (i) industry, such as a customer who used a lot of water, but might give back a lot of water to the Town; (ii) reserving a certain amount of water for residential, commercial and industrial; and (iii) sewer treatment that was in a good area to provide service for Prescott and Prescott Valley. The Town should be thinking about the back end of the water first.

4) ADJOURNMENT

MOVED by Councilmember Jack Miller, seconded by Councilmember Mike Best to adjourn the meeting at 11:07 a.m.

AYE: Mayor Darryl Croft, Vice-Mayor Lon Turner, Councilmember Mike Best, Councilmember Cloyce Kelly, Councilmember Corey Mendoza, Councilmember Jack Miller

PASSED - Unanimously

Darryl L. Croft, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the _____ day of _____, 2018. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this _____ day of _____, 2018.

Jami C. Lewis, Town Clerk

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

7.a.

Meeting Date: 10/09/2018
Contact Person: Scott Bruner, Community Services Director
 Phone: 928-636-2687 x-1237
Department: Community Services
Item Type: Action
Estimated length of staff presentation: 5 minutes
Physical location of item: Memory Park, 1020 W. Palomino Road

AGENDA ITEM TITLE:

Consideration and possible action to approve a cooperative purchasing contract with Miracle Playgrounds in the amount of \$55,534.73 for the purchase of playground equipment, and approve purchase of a ramada from Royal Covers in the amount of \$9,997.00 for the Memory Park/Library Expansion.

RECOMMENDED ACTION:

Approve a cooperative purchasing contract with Miracle Playgrounds in the amount of \$55,534.73 for the purchase of playground equipment, and approve purchase of a ramada from Royal Covers in the amount of \$9,997.00 for the Memory Park/Library Expansion.

SITUATION AND ANALYSIS:

Four playground equipment manufacturers were contacted with Miracle Recreation coming in with the best pricing. Also, by using Miracle through a state contract with Mohave, the Town was able to save an additional \$10,000 that can be directed to a planned ramada next to the playground site.

Royal Covers had the lowest bid of three ramada quotes at \$9997.00

Fiscal Impact

Fiscal Impact?: Yes
If Yes, Budget Code: 07-63-5526
Available: \$65,000
Funding Source:

Attachments

CPA - Miracle Recreation Equipment
 CSA - Royal Covers - Ramada

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MIRACLE RECREATION EQUIPMENT COMPANY**

THIS COOPERATIVE PURCHASING AGREEMENT (this “Agreement”) is entered into as of October 9, 2018, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Miracle Recreation Equipment Company, an Iowa corporation (the “Contractor”).

RECITALS

A. After a competitive procurement process, Mohave Educational Services Cooperative, Inc. (“Mohave”) entered into Contract No. 14X-MCLE-0220, dated February 20, 2015, as amended by Extension of Contract, dated February 8, 2016, Agreement to Amend, dated June 17, 2016, Agreement to Amend, dated September 12, 2016, Extension of Contract, dated February 8, 2017, Agreement to Amend, dated May 16, 2017, Extension of Contract, dated January 22, 2018, and Agreement to Amend, dated September 5, 2018 (collectively, the “Mohave Contract”), for the Contractor to provide playground, fitness and related equipment. A copy of the Mohave Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted to purchase such Equipment and Services under the Mohave Contract, at its discretion and with the agreement of the awarded Contractor, and so long as the Mohave Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Mohave Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with playground equipment, as more particularly set forth in Section 2 below (the “Equipment and Services”) and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Equipment and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until February 19, 2019, unless terminated as otherwise provided in this Agreement or the Mohave Contract.

2. Scope of Work. Contractor shall provide to the Town the Equipment and Services under the terms and conditions of the Mohave Contract and as more particularly set forth in the Quotation attached hereto as Exhibit B and incorporated herein by reference.

3. Inspection; Acceptance. All Equipment and Services are subject to final inspection and acceptance by the Town. Equipment failing to conform to the requirements of this Agreement and/or the Mohave Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Equipment or Services, the Town may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Equipment or Service into compliance and withhold the cost of same from any payments due to the Contractor.

4. Compensation. The Town shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual amount not to exceed \$55,534.73 for Equipment and Services at the unit rates set forth in the Mohave Contract and as more particularly set forth in the Quotation.

5. Payments. The Town shall pay the Contractor monthly, based upon acceptance and delivery of Equipment and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Mohave Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of Equipment delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Mohave Contract will be subject to rejection and may be returned.

6. Safety Plan. Contractor shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Contractor's sole determination, the Services to be provided do not require a safety plan, Contractor shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

7. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 8 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 8 below. To the extent necessary for the

Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

8. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

9. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

10. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

11. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

12. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim

against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

13. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Quotation, the Mohave Contract and invoices, the documents shall govern in the order listed herein.

14. Rights and Privileges. To the extent provided under the Mohave Contract, the Town shall be afforded all of the rights and privileges afforded to Mohave and shall be "Mohave" (as defined in the Mohave Contract) for the purposes of the portions of the Mohave Contract that are incorporated herein by reference.

15. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 14 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Mohave to the extent provided under the Mohave Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance.

16. Performance Bond. The Contractor shall be required to furnish non-revocable security binding the Contractor to provide faithful performance of this Contract in the amount of one hundred percent (100%) of the total Contract Price payable to the Town. Performance security shall be in the form of a performance bond, certified check, cashier's check or irrevocable letter of credit. This security must be in the possession of the Engineer within 10 business days after receipt of the executed Agreement from the Town. If the Contractor fails to execute and deliver the security instrument as required, the Contractor may be found in default and this Contract terminated by the Town. In case of default the Town reserves all rights. All performance bonds shall be executed in the form attached hereto as Exhibit C, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have, at the time of submission of the performance bond, an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

17. Payment Bond. The Contractor shall be required to furnish non-revocable security for the protection of all persons supplying labor and material to the Contractor or any Subcontractor for the performance of any Work related to this Contract. Payment security shall be in the amount of one hundred percent (100%) of the total Contract Price and be payable to the Town. Payment security shall be in the form of a payment bond, certified check, cashier's check or irrevocable letter of credit. This security must be in the possession of the Engineer within 10 business days after receipt of the executed Agreement from the Town. If the Contractor fails to execute and deliver the security instrument as required, the Contractor may be found in default and this Contract terminated by the Town. In case of default the Town reserves all rights. All payment bonds shall be executed in the form attached hereto as Exhibit D, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority to transact surety business in the State of Arizona by the

Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have, at the time of submission of the payment bond, an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

18. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town	Town of Chino Valley 202 North State Route 89 Chino Valley, Arizona 86323 Attn: Town Manager
With copy to:	GUST ROSENFELD P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire
If to Contractor:	Miracle Recreation Equipment Company 9106 Pulsar Court, Unit C Corona, California 92883 Attn: Monte Corley

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

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

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

MIRACLE RECREATION EQUIPMENT
COMPANY, an Iowa corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MIRACLE RECREATION EQUIPMENT COMPANY

[Mohave Contract]

See following pages.



Mohave Contract
14X-MCLE-0220

Miracle Recreation Equipment Co.
Via Email

September 5, 2018

Agreement To Amend the Terms and Conditions for Federal and State Requirements

In order for Mohave Educational Services Cooperative, Inc.'s (Mohave's) contracts to comply with the Arizona Department of Education requirements, Mohave is amending this contract to include provisions for the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care Education Reconciliation Act, Public Law 111-152 and the Byrd Anti-Lobbying Amendment 31 U.S. Code § 1352, CFR § 200.450 and Federal Acquisition Regulation 52.203-11.

The Terms and Conditions of your contract have been modified as follows:

8. FEDERAL and STATE REQUIREMENTS

By signing the amendment below, bidder certifies the following:

Affordable Care Act requirements: Contract vendor understands and agrees that it shall be solely responsible for compliance with the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). Contract vendor shall bear sole responsibility for providing health care benefits for its employees who provide services to the member as required by state or federal law.

(Initial)

Byrd Anti-Lobby Amendment: In accordance with the Byrd Anti-Lobbying Amendment 31 U.S. Code § 1352, Code of Federal Regulations § 200.450 and Federal Acquisition Regulation 52.203-11:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer in accordance with its instructions; and

(3) The undersigned shall require that the language of this certification be included in the award documents for all subcontract awards at all tiers and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(Initial)

Debbie Back Kevin Walker
Miracle Recreation Equipment Co.

Dated 9/6/18

Dated September 5, 2018
Anita McLeMore, Executive Director
Mohave Educational Services Cooperative, Inc.



1/22/2018

Extension of Contra

(Page 1 of 3)

Debbie Back
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

RE: Contract # 14X-MCLE-0220 Extension of contract Agreement made by, and between, Miracle Recreation Equipment Co. and Mohave Educational Services Cooperative (Mohave).

In accordance with its terms and conditions, Mohave desires to extend contract 14X-MCLE-0220 for a period of one (1) year, beginning 2/20/2018. The extension shall be under the same terms and conditions contained therein.

Please indicate your desire to extend by completing the appropriate information below and on the following pages. If the contract is extended, Miracle Recreation Equipment Co. agrees to provide products or prices as per 14X-1121.

We desire to **extend** the contract as specified above, and agree to abide by the current terms and conditions, and any attached clarifications.

Signature Monte Corley Title District Manager
Typed/Printed Name Monte Corley Date 2-2-2018

Please verify that the following information is correct and accurate:

POs Attn: Order Desk
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

Remit to: Miracle Recreation Equipment Co.
Accounts Receivable
P.O Box 204757
Dallas, TX 95320-4757

Member Contact: Monte Corley
Contract Administrator: Debbie Back
Phone Number: 800-905-1411 x 105
Fax Number: 877-905-1411

If both pages of this notice are not received at Mohave's Kingman office on, or before, 2/20/2018, orders shall be held without processing. Email or fax completed extension to contracts@mesc.org or (928) 718-3232.

To terminate the contract effective 2/20/2015, email or fax a notice of your request to cancel the contract to contracts@mesc.org or (928) 718-3232. You agree to complete any authorized work or orders received prior to that date. Renewals not received within 14 days following 2/20/2015 shall result in cancellation of the contract. However, any authorized orders received prior to this date, shall be completed under this contracts terms and conditions.

Extension of Contract

(Page 2 of 3)

Pricing Update

We list your contract as utilizing Fixed. Please confirm the following regarding pricing under your contract:

____ Our contract utilized firm-fixed pricing. We agree to hold the current prices until the next contract renewal date of 2/20/2019.

____ Our contract utilized percentage off MSRP/Retail pricing. The current price lists/catalogs are still applicable.

☒ We are requesting a price adjustment. A price list/catalog will be submitted by 2-2-2018. (Insert Date)

____ We will provide new price list(s)/catalog(s) by _____. (Insert Date)

Remember that your firm cannot quote any new products contained in pricing submitted with your contract renewal until it has been reviewed and approved by your Contract Specialist. Current contract pricing will remain in effect until new pricing has been reviewed and approved.

Vendor Logo

Currently, we have the following logo on file for use on our website in our product/vendor finder:



If you wish to revise or update the logo we have on file, keep the following requirements in mind:

- *What file types are acceptable?* Vector point files are highly recommended (such as .ai or .eps files). If you don't have access to a vector point file, a large hi-resolution (approximately 150-300 dpi) JPEG, TIFF, BITMAP, GIF or PNG file will work. Having a file with a high dpi will help keep images looking sharp if we need to resize the logo.
- *What file size is recommended?* There is no limitation to the logo file size.

Vendor Benefits Description

Currently, we have the following information on our website detailing the benefits of your contract for our members to view:

Extension of Contract

(Page 3 of 3)

Vendor Benefits Description (continued)

Miracle offers the latest in commercial playground consulting, design, and manufacturing. For over 95 years, Miracle's products have stood the test of time and are the most durable, functional and thrilling playgrounds available. From Miracle's flagship Kid's Choice product line to the economical Tot's Choice and our massive Mega Tower, proprietary Center Stage and themed Nature's Choice playground lines, we can meet the needs of all budgets and types of play experience wanted. Miracle's continued focus on inclusive play design can help make your play area highly accessible for all needs. In addition to the park and playground products, contract offerings include pre-fabricated steel shelters from Poligon, engineered wood fiber from Fibar, innovative powder coated steel site furnishings from Sitescapes, the latest in adult fitness products from Greenfields and pour in place surfacing solutions from Flexground. With complete turnkey installation options available from the Miracle Certified Installer, Miracle can design and construct your playground from start to finish.

If you wish to revise or update the vendors benefits information we have on file, keep the following requirements in mind:

- The description should be 150-200 words that explain the benefits that your company can provide to our members through your Mohave contract.
- The description should give a brief overview for members who may be accessing information about your contract from our product vendor finder on Mohave's website.
- Please note that Mohave reserves the right to revise or modify the information provided either for content or length.

Email or fax request for information revisions or additional information to contracts@mesc.org or 928-718-3232. If you have any questions, contact your Contract Specialist either via email at maria@mesc.org or phone 928-718-3237.



Mohave Contract
14X-MCLE-0220

Miracle Recreation Equipment Co.
Via Email

May 16, 2017

Agreement To Amend the Terms and Conditions of the Existing Contract

In order for Mohave Educational Services Cooperative, Inc.'s (Mohave's) contracts to comply with Federal Education Department General Administration Regulations (EDGAR) requirements, Mohave is amending its existing contracts. Please review, initial next to each requirement, sign the bottom of the amendment and return to Mohave no later than June 16, 2017.

The Terms and Conditions of your contract have been modified as follows:

A. Anti-Lobbying Certification: In accordance with the Federal Acquisition Regulation, 52.203-11:

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The bidder, by signing this amendment, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989—
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, Title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

 **Initial Agreement as the Authorized Representative of the Contract Vendor**

- B. Clean Air Act, Clean Water Act and Environmental Protection Agency Regulations:** Contract vendor and its subcontractors shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations (7 CFR 3016.36 (i) (12)). This shall only apply to federally funded projects subject to the Clean Air Act, Clean Water Act and current applicable EPA regulations.

 **Initial Agreement as the Authorized Representative of the Contract Vendor**

Mohave Educational Services Cooperative, Inc.
625 E. Beale St. • Kingman • AZ • 86401 • 928-753-6945 • www.mesc.org



2/8/2017

Extension of Contract

(Page 1 of 3)

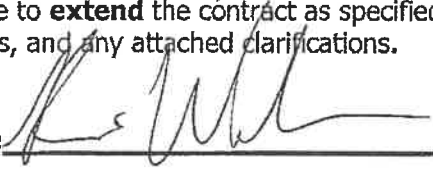
Debbie Back
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

RE: Contract # 14X-MCLE-0220 Extension of contract Agreement made by, and between, Miracle Recreation Equipment Co. and Mohave Educational Services Cooperative (Mohave).

In accordance with its terms and conditions, Mohave desires to extend contract 14X-MCLE-0220 for a period of one (1) year, beginning 2/20/2017. The extension shall be under the same terms and conditions contained therein.

Please indicate your desire to extend by completing the appropriate information below and on the following pages. If the contract is extended, Miracle Recreation Equipment Co. agrees to provide products or prices as per 14X-1121.

We desire to **extend** the contract as specified above, and agree to abide by the current terms and conditions, and any attached clarifications.

Signature  Title Manager

Typed/Printed Name Kevin Walker Date 1-29-17

Please verify that the following information is correct and accurate:

POs Attn: Order Desk
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

Remit to: Miracle Recreation Equipment Co.
Accounts Receivable
P.O Box 204757
Dallas, TX 95320-4757

Member Contact: Monte Corley
Contract Administrator: Debbie Back
Phone Number: 800-905-1411 x 105
Fax Number: 877-905-1411

If both pages of this notice are not received at Mohave's Kingman office on, or before, 2/20/2017, orders shall be held without processing. Email or fax completed extension to contracts@mesc.org or (928) 718-3232.

To terminate the contract effective 2/20/2015, email or fax a notice of your request to cancel the contract to contracts@mesc.org or (928) 718-3232. You agree to complete any authorized work or orders received prior to that date. Renewals not received within 14 days following 2/20/2015 shall result in cancellation of the contract. However, any authorized orders received prior to this date, shall be completed under this contracts terms and conditions.

Extension of Contract

(Page 2 of 3)

Pricing Update

We list your contract as utilizing Fixed. Please confirm the following regarding pricing under your contract:

☒ Our contract utilized firm-fixed pricing. We agree to hold the current prices until the next contract renewal date of 02/20/2018.

☐ Our contract utilized percentage off MSRP/Retail pricing. The current price lists/catalogs are still applicable.

☐ We are requesting a price adjustment. A price list/catalog will be submitted by _____. (Insert Date)

☐ We will provide new price list(s)/catalog(s) by _____. (Insert Date)

Remember that your firm cannot quote any new products contained in pricing submitted with your contract renewal until it has been reviewed and approved by your Contract Specialist. Current contract pricing will remain in effect until new pricing has been reviewed and approved.

Vendor Logo

Currently, we have the following logo on file for use on our website in our product/vendor finder:



If you wish to revise or update the logo we have on file, keep the following requirements in mind:

- *What file types are acceptable?* Vector point files are highly recommended (such as .ai or .eps files). If you don't have access to a vector point file, a large hi-resolution (approximately 150-300 dpi) JPEG, TIFF, BITMAP, GIF or PNG file will work. Having a file with a high dpi will help keep images looking sharp if we need to resize the logo.
- *What file size is recommended?* There is no limitation to the logo file size.

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Extension of Contract

(Page 3 of 3)

Vendor Benefits Description (continued)

Miracle offers the latest in commercial playground consulting, design, and manufacturing. For over 95 years, Miracle's products have stood the test of time and are the most durable, functional and thrilling playgrounds available. From Miracle's flagship Kid's Choice product line to the economical Tot's Choice and our massive Mega Tower, proprietary Center Stage and themed Nature's Choice playground lines, we can meet the needs of all budgets and types of play experience wanted. Miracle's continued focus on inclusive play design can help make your play area highly accessible for all needs. In addition to the park and playground products, contract offerings include pre-fabricated steel shelters from Poligon, engineered wood fiber from Fibar, innovative powder coated steel site furnishings from Sitescapes, the latest in adult fitness products from Greenfields and pour in place surfacing solutions from Flexground. With complete turnkey installation options available from the Miracle Certified Installer, Miracle can design and construct your playground from start to finish.

If you wish to revise or update the vendors benefits information we have on file, keep the following requirements in mind:

- The description should be 150-200 words that explain the benefits that your company can provide to our members through your Mohave contract.
- The description should give a brief overview for members who may be accessing information about your contract from our product vendor finder on Mohave's website.
- Please note that Mohave reserves the right to revise or modify the information provided either for content or length.

Email or fax request for information revisions or additional information to contracts@mesc.org or 928-718-3232. If you have any questions, contact your Contract Specialist either via email at nancy@mesc.org or phone 928-718-3228.



**Mohave Contract
14X-MCLE-0220**

**Miracle Recreation Equipment Co.
Via Email**

September 12, 2016

Agreement To Amend the Terms and Conditions for Certification

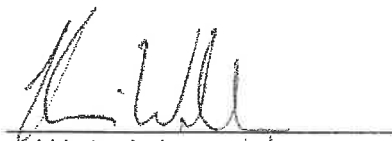
In order for Mohave Educational Services Cooperative, Inc.'s (Mohave's) contracts to comply with new legislation that went into effect August 6, 2016, Mohave is amending its existing contracts. This law "*prohibits public entities from entering into contract with a company to acquire or dispose of services, supplies from information technology or construction, unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.*"

The Terms and Conditions of your contract have been modified as follows:

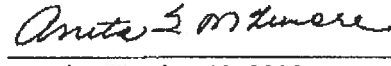
2. CERTIFICATION

By signing the amendment below, bidder certifies the following:

- Bidder shall comply with ARS §35-393.01 and certify that they are not currently engaged in, and agree that for the duration of the contract to not engage in, a boycott of Israel.


Debbie Back Kevin Whitford
Miracle Recreation Equipment Co.

Dated 9/12/16


Dated September 12, 2016
Anita McLemore, Interim Executive Director
Mohave Educational Services Cooperative, Inc.



**Mohave Contract
14X-MCLE-0220**

**Miracle Recreation Equipment Co.
Via Email**

June 17, 2016

Agreement To Amend The Standard Terms And Conditions for Construction; Performance And Payment Bonds

Mohave Educational Services Cooperative, Inc.'s (Mohave) previous contract requirements for payment and performance bonding included reference to statute, title, and/or rules, and specific vendor actions, and acknowledgment from the member when waiving performance and payment bonding. However, these requirements may not be applicable to all members. This amendment replaces the previous requirements in the Special Terms and Conditions regarding Issuing performance and payment bonds. The Special Terms and Conditions have been modified as follows:

11 . PERFORMANCE AND PAYMENT BONDS

- 11.1. Issuing performance and payment bonds:** It shall be the sole responsibility of the member to determine if any applicable performance and payment bonding requirements apply to the procurement under an awarded contract. Member must request that the contract vendor provide the performance and payment bonds that meets the requirements prior to project implementation.

The contract vendor shall supply Mohave with a copy of the procured bonds upon request. If the contract vendor fails to deliver any required performance or payment bonds requested by the member, the contract with Mohave may be canceled.

- 11.2. Payment bond requirement:** An irrevocable payment bond shall be executed in an amount equal to 100% of the price specified in the contract between the member and the contract vendor by a surety company authorized to do business in Arizona. This bond will protect all persons supplying labor and material to the contract vendor for the performance of the work provided in the contract.

- 11.3. Performance bond requirement:** An irrevocable performance bond shall be executed in an amount equal to 100% of the price specified in the contract between the member and the contract vendor by a surety company authorized to do business in Arizona.

This agreement shall be effective July 1, 2016. Signature below indicates agreement to modifications as listed above.

Debbie Back Kevin Walker, Manager
Miracle Recreation Equipment Co.

Dated

6/23/16

Dated June 17, 2016

Anita McLemore, Interim Executive Director
Mohave Educational Services Cooperative, Inc.

Mohave Educational Services Cooperative, Inc.

625 E. Beale St. • Kingman • AZ • 86401 • 928-753-6945 • www.mesc.org



2/8/2016

Extension of Contract

(Page 1 of 3)

Debbie Back
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

RE: Contract # 14X-MCLE-0220 Extension Agreement made by and between Miracle Recreation Equipment Co. and Mohave Educational Services Cooperative (Mohave).

In accordance with its terms, Mohave desires to extend contract 14X-MCLE-0220 for a period of one (1) year, beginning 2/20/2016. The extension shall be under the same terms and conditions contained therein.

Please indicate your desire to extend by completing the appropriate information below and on the following pages. If the contract is extended, Miracle Recreation Equipment Co. agrees to provide products or prices as per 14X-1121.

We desire to **extend** the contract as specified above, and agree to abide by the original terms & conditions, and any attached clarifications.

Signature Kevin Walker Title Manager

Typed/Printed Name Kevin Walker Date 2/9/16

Please check the information below.

POs Att: Order Desk
Miracle Recreation Equipment Co.
9106 Pulsar Ct Unit C
Corona, CA 92883

Remit to: Miracle Recreation Equipment Co.
Accounts Receivable
P.O Box 204757
Dallas, TX 95320-4757

Member Contact: Monte Corley
Contract Administrator: Debbie Back
Phone Number: 800-905-1411 x 105
Fax Number: 877-905-1411

If both pages of this notice are not received at Mohave's Kingman office on or before 2/20/2016, orders may be held without processing. Email or Fax completed extension to contracts@mesc.org or (928) 718-3238

To terminate contract 14X-MCLE-0220 effective 2/20/2016, send a notice of such to (928) 718-3238 or email contracts@mesc.org. You agree to complete any authorized work or orders received prior to that date.

Extension of Contract

(Page 2 of 3)

Pricing Update

We list your contract as utilizing Fixed. Please confirm the following regarding pricing under your contract:

____ Our contract utilized firm-fixed pricing. We agree to hold the current prices until the next contract renewal date of 02/20/2017.

____ Our contract utilized percentage off MSRP/Retail pricing. The current price lists/catalogs are still applicable.

X We will provide new price lists/catalog by 2/19/2016. (Insert Date)

Remember that your firm cannot quote any new products contained in pricing submitted with your contract renewal until it has been reviewed and approved by your Contract Specialist. Current contract pricing will remain in effect until new pricing has been reviewed and approved.

Vendor Logo

Currently, we have the following logo on our website for our members to view:



If you wish to revise or update the information, keep the following key points in mind:

- *What file types are acceptable?* Vector point files are highly recommended (such as .ai or .eps files). If you don't have access to a vector file, a large hi-resolution (approx. 150-300 dpi) JPEG, TIFF, BITMAP, GIF or PNG file will work. Having a high dpi will help keep images looking sharp if we need to resize the logo.
- *What file size is recommended?* There is no limitation to the logo file size.

Vendor Benefits Description

Currently, we have the following information on our website detailing the benefits of your contract for our members to view:

Extension of Contract

(Page 3 of 3)

Vendor Benefits Description (continued)

If you wish to revise or update the information, keep the following key points in mind:

- The description should be 150-200 words that explain the benefits that your company can provide to our members through your Mohave contract.
- This description should give a brief overview for members who may be accessing information about your contract via our Product Vendor Finder.
- Please note that Mohave reserves the right to revise or modify the information provided either for content or length.

Email any information corrections, or additional information to contracts@mesc.org. If you have any questions, contact your Contract Specialist either via email nancy@mesc.org or phone <<csInfo::csphone>>.

Offer and Acceptance Form

Place after Tab 1a

IFB 14X-1121 Playground, Fitness and Related Equipment

To Mohave Educational Services Cooperative, Inc.:

The undersigned hereby certifies understanding and compliance with the requirements in all terms, conditions, specifications and amendments. Bidder further agrees to furnish materials and/or services in compliance with all terms, conditions, specifications and amendments in the solicitation and any written exceptions in the offer.

Federal Employer Identification Number 43-1595099

Company Name Miracle Recreation Equipment Co.

Address 878 E. Hwy 60 City Mouatt State MO Zip 65708

Telephone Number 417-235-6917 Fax 417-235-3551

Printed Name Kevin Walker Title Manager

Primary Email Monte@miracle-playground.com Alternate email Kevin.Walker@anypower.com

Note: The primary email address will be used for all communication from Mohave regarding your response to this solicitation. Provide an alternate email address that will be used **only** if the primary email address is not valid.

Authorized Signature Kevin Walker

The offer and acceptance form should be submitted with a signature by the person authorized to sign the bid. The person signing the bid shall initial erasures, interlineations, or other modifications in bid. Failure to sign the bid and contract award document, or to make other notations as indicated, may result in rejection of bid.

The contract vendor shall not commence any billable work or provide any material or service under this contract unless and until contract vendor receives a purchase order with Mohave's review noted.

Acceptance of Offer and Contract Award (Mohave Only)

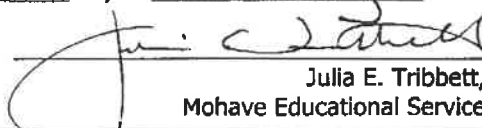
Your Bid Is Hereby Accepted:

As contract vendor, you are now bound to sell the materials and/or services offered to and accepted by Mohave in accordance with the solicitation, including all terms, conditions, specifications, and amendments.

This Contract shall be referred to as Contract Number 14X-MCLE-0220

Awarded this 23 day of January 2015.

This contract shall be effective this 20 day of February 2015.



Julia E. Tribbett, Executive Director
Mohave Educational Services Cooperative, Inc.



14X-MCLE-0220 Table of Contents

Miracle Recreation Equipment Co. Response to IFB 14X-1121

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Tab 2B – Certificate of Insurance	Please call Mohave for information.
Tab 2C – Financial Information	All financial information is kept confidential and has been removed.
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Tab 5 – Additional Information	Please call Mohave for information.

Click section title to be taken directly to that section.

3/31/14 EH



Amendment 1
Invitation for Bid 14X-1121
Playground, Fitness and Related Equipment

Amendment 1 is hereby made part of the solicitation documents and shall be included in all submitted formal sealed bids. Bidders shall formally acknowledge receipt of Amendment 1 by including this page, signing, and dating the following statement:

Amendment 1 is acknowledged by: Monte Corley
 Printed Name and Title: Monte Corley, Managing Partner
 Name of Firm: Mi-acle
 Date: 11-14-14

Place a signed copy of Amendment 1 after Tab 1b in your formal bid binder.

Note: The published due date and time of November 21, 2014 at 3:00 p.m. (local Arizona time) remains unchanged.

WORKBOOK MARKET BASKET:

Market Basket #1 – Added outside diameter of 3 1/2 inches to line 5 of original workbook. There are different diameter posts available.

All questions regarding Invitation for Bid 14X-1121 should be directed to:

Mike Nentwig, Contract Specialist I
 Email: contracts@mesc.org
 Telephone: (928) 718-3203

Julia E. Tribbett

Executive Director
Mohave Educational Services Cooperative, Inc.

Publish Date: November 4, 2014



**Amendment 2
Invitation for Bid 14X-1121
Playground, Fitness and Related Equipment**

Amendment 2 is hereby made part of the solicitation documents and shall be included in all submitted formal sealed bids. Bidders shall formally acknowledge receipt of Amendment 2 by including this page, signing, and dating the following statement:

Amendment 2 is acknowledged by: Monte Curley

Printed Name and Title: Monte Curley, Managing Partner

Name of Firm: Miracle

Date: 11-14-14

Place a signed copy of Amendment 2 after Tab 1b in your formal bid binder.

Note: The published due date and time of November 21, 2014 at 3:00 p.m. (local Arizona time) remains unchanged.

WORKBOOK MARKET BASKET:

Pricing Instructions – Bullet three deleted, not applicable to market baskets. Bullet seven (amended to bullet 6), corrected location reference from Gilbert, AZ to "locations listed in the market baskets."

Market Basket #1 – Corrected quantity of line four to "2" and added line five to properly reflect supplied drawing. Additionally, corrected line item numbers in Market Basket 1.

All questions regarding Invitation for Bid 14X-1121 should be directed to:

Mike Nentwig, Contract Specialist I

Email: contracts@mesc.org

Telephone: (928) 718-3203

Julia E. Tribbett

Executive Director

Mohave Educational Services Cooperative, Inc.

Publish Date: November 13, 2014

General Terms and Conditions

Place after Tab 1c

1. **CANCELLATION**

1.1. Cancellation for bankruptcy or acquisition: Mohave reserves the right to cancel, or suspend the use of, any contract if contract vendor files for bankruptcy protection, or is acquired by an independent third party.

1.2. Cancellation for conflict of interest: Mohave may cancel this contract pursuant to ARS § 38-511 for conflict of interest. Conflict of interest occurs if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Mohave, is or becomes at any time while the contract or an extension of the contract is in effect, an employee of, or a consultant to, any other party to the contract, with respect to the subject matter of the contract. Members shall incur no penalty or further obligation if the contract is cancelled for conflict of interest. A written notice of cancellation shall be sent to the contract vendor and the effective date of cancellation shall be the date specified within the written notice of cancellation.

1.3. Cancellation for convenience: Mohave reserves the right to immediately cancel the contract without penalty or recourse, in whole or in part, when Mohave determines that action to be in the best interests of its members. Contract vendor shall be entitled to receive just and equitable compensation in accordance with applicable contract pricing for authorized work in progress, authorized work completed and materials accepted before the effective date of the cancellation.

1.4. Cancellation for non-performance or contract vendor deficiency: Mohave may terminate any contract if members have not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. Mohave reserves the right to cancel the whole or any part of this contract due to failure by contract vendor to carry out any obligation, term or condition of the contract. Mohave may issue a written deficiency notice to contract vendor for acting or failing to act in any of the following:

- Failing to comply with the accepted terms and conditions of the contract;
- Providing material that does not meet the specifications of the contract;
- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work/services and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving Mohave reason to believe that contract vendor will not or cannot perform the requirements of the contract
- Failing to provide required performance bonds;
- Performing work or providing services under the contract prior to receiving a Mohave reviewed member purchase order for such work.

Upon receipt of a written deficiency notice, contract vendor shall have ten (10) days to provide a satisfactory response to Mohave to adequately address all issues of concern. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this clause, all goods, materials and work paid for by the member, along with documents, data and reports prepared by contract vendor under the contract shall become the property of the member.

1.5. Cancellation for replacement: Mohave reserves the right to cancel a contract awarded under this solicitation and replace it with a newer contract awarded to the same contract vendor for similar goods and services. Mohave may, at its option, either replace a contract resulting from this solicitation or delay a new award until the existing contract expires. The decision to replace the contract rests solely with Mohave.

1.6. Contract vendor cancellation: Contract vendor may cancel this contract at any time upon thirty (30) days prior written notice to Mohave or at time of annual contract renewal. Termination shall have no effect on projects in progress at the time the notice of cancellation is received by Mohave.

1.7. Continuation of performance: Contract vendor shall continue to perform in accordance with the requirements of the contract, up to the date of cancellation and as directed in the cancellation notice.

1.8. Gratuities: Mohave shall cancel this contract if it is found that gratuities in the form of entertainment, gifts or otherwise, were offered or given by contract vendor or any agent or representative of contract vendor, to any employee of Mohave or member with a view toward securing a contract or with respect to the performance of this contract. Paying the expenses of normal business meals shall be in accordance with each member's policy regarding gratuities. Samples of software, equipment or hardware provided to Mohave for demonstration or evaluation are not considered gratuities.

2. CERTIFICATION

By signing the Offer and Acceptance Form (page 55 of the IFB), bidder certifies the following:

- Bidder has examined and understands the terms, conditions, scope of work/services and specifications and other documents in this solicitation.
- The submission of the bid did not involve collusion or other anticompetitive practices. Neither signatory nor any person on his behalf has connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.
- Bidder 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.
- Neither bidder, nor any officer, director, partner, member or associate of bidder, nor any of its employees directly involved in obtaining contracts with the State of Arizona, Mohave Educational Services Cooperative, Inc., or any subdivision of the state has been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985.
- Bidder agrees to comply fully with any and all provisions of ARS Title 32, Chapter 10 (Registrar of Contractors) that may regulate bidder's business.
- Bidder shall not discriminate against any employee, or applicant for employment, in violation of federal and state laws (see Federal Executive Order 11246; and ARS Title 41, Chapter 9, Article 4).
- Bidder is not currently suspended, debarred or otherwise precluded from participating in any public procurement activity with any federal, state or local government entity.
- If awarded a contract, bidder agrees to promote, offer and sell under Mohave contract only those materials and/or services awarded to contract vendor by Mohave.
- If awarded a contract, bidder shall provide the equipment, commodities, and/or services to members of Mohave in accordance with the terms, conditions, scope of work/services, specifications, and other documents of this Invitation For Bid.
- If awarded a contract, bidder agrees that all staff and other individuals eligible to receive services shall have equal access to the services regardless of race, religion, color, sex, disability, age or national origin (including language minority individuals).
- Bidder and all proposed subcontractors comply and shall remain in compliance with the Federal Immigration and Nationality Act (FINA), all other federal immigration laws and regulations, ARS § 41-4401, and ARS § 23-214, which requires compliance with federal immigration laws by Arizona employers, Arizona contractors and Arizona subcontractors in accordance with the E-Verify employee eligibility verification program.

3. CONFIRMATION

If an apparent mistake in a bid, relevant to the award determination is discovered after opening and before award, Mohave shall contact the bidder for written confirmation of the bid. If bidder fails to act, the bidder shall be considered non-responsive.

Mohave may contact a bidder to confirm our understanding of the bid. Such contact shall be prior to award. Mohave shall obtain written confirmation from the bidder and shall retain the confirmation in the procurement file.

4. CONFIDENTIAL INFORMATION

4.1. Confidential information request: If bidder believes that its bid contains confidential trade secrets or other proprietary data not to be disclosed, a statement advising Mohave of this fact shall accompany the bid, and the information shall be so identified wherever it appears. Mohave shall review the statement and provide their determination in writing whether the information shall be withheld. If Mohave determines to disclose the information, Mohave shall inform bidder in writing of such determination. Requests to deem the entire bid as confidential will not be considered.

4.2. Pricing: Mohave will not consider pricing to be confidential or proprietary.

4.3. Public record: All bids submitted in response to this solicitation shall become the property of Mohave. They will become a matter of public record available for review, subsequent to award notification.

5. COOPERATIVE PURCHASING

5.1. Cooperative purchasing: This contract is based on the need for Mohave to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to members. Any contract that prohibits sales from being made to specific types of members (for example, state agencies or local government units) may not be considered. Sales without restriction to any members are preferred.

5.2. Cooperative purchasing agreements: Cooperative Purchasing Agreements between Mohave and its members have been established under Arizona procurement rules and code for use of contracts.

5.3. Most favored customer: Bidder agrees all prices, terms, warranties, and benefits granted by bidder to members through this contract are comparable to or better than the equivalent terms offered by bidder to any present customer meeting the same qualifications or requirements. Nothing in this solicitation is intended to establish a most favored customer relationship between Mohave and contract vendor. Contract vendor may respond to any solicitation without regard to this contract. If contract vendor offers lower prices to any of its other customers, it may lower its prices to Mohave at the same time by written notice.

6. ESTIMATED QUANTITIES

Mohave anticipates considerable activity resulting from this solicitation. An estimate of purchases is provided in the Scope of Work/services (page 4) of the requested materials or services. However, no commitment of any kind is made concerning quantities to be acquired. Mohave does not guarantee usage. Usage depends on the actual needs of members and marketing by contract vendor.

7. EVALUATION and AWARD

7.1. Basis of award: Award(s) will be made to the responsive and responsible bidder(s) whose bid(s) is (are) determined in writing to be the low responsive and responsible bid or bids. Mohave reserves the right to use model projects/market baskets to determine the low ranking of bids. It is Mohave's intent to award a complete line of products, when possible and advantageous.

7.2. Deviations and exceptions to requirements: All requested exceptions/deviations must be clearly explained. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.

7.3. Formation of contract: A response to this solicitation is an offer to contract with Mohave based upon the terms, conditions, scope of work/services, and specifications contained in this request. A bid does not become a contract unless and until Mohave accepts it. A contract is formed when a Mohave administrator signs the award document.

7.4. Multiple award: To assure that our contracts meet the requirements of all members, Mohave may award multiple contracts. Bidder should consider this fact in preparing their response. The decision to award multiple contracts, award a single contract, or make no award rests solely with Mohave.

A multiple award shall be made only if the procurement officer determines in writing that a multiple award is necessary and is advantageous to Mohave members. A multiple award shall be limited to the least number of contracts necessary to meet the requirements of the using agencies. Mohave shall make the sole determination of the least number of contracts required to meet the need. Mohave's basis for determining whether to award multiple contracts shall be based upon considerations for the large number of members, diverse types of members, location of members throughout Arizona and members' past usage of similar contracts.

Criteria for selecting vendors for multiple contracts shall be based upon considerations for members' experience with existing products and systems, brand continuity for parts replacement and future expansion, contract vendor's ability to provide for our large, diverse membership, bonding capacity, geographic area(s) served, Mohave's past experience with contracts for similar product/services, and/or other relevant criteria.

7.5. 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 Mohave's members. Mohave and its members reserve the right to obtain like goods and services from other sources.

7.6. Past performance information: Past Performance Information (PPI) is relevant information regarding a contract vendor's actions under previously awarded contracts to public agencies. It includes contract vendor's record of performance under such contracts including, but not limited to: conformance to the terms, conditions, specifications and scope of work/services of the contracts, responsiveness to, and correction of, contract claims and controversies, and satisfaction of the contracting entities. PPI shall be a factor in evaluation and award.

7.7. Responsible bidder: A responsible bidder is a firm or person with the capability to perform the contract requirements and the integrity and reliability, which will assure good faith performance. Mohave must determine a bidder to be responsible before awarding a contract to bidder.

7.8. Responsive bids: A responsive bid reasonably and substantially conforms to all material requirements of the solicitation. Bids must be responsive to receive award consideration. Mohave reserves the right to waive minor informalities.

8. FEDERAL and STATE REQUIREMENTS

8.1. Compliance with federal and state requirements: Contract vendor agrees, when working on any federally assisted projects with more than \$2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act, the Copeland "Anti-Kickback" Act, the Housing and Urban Development Act of 1968, the Equal Opportunity Employment requirements as amended by Executive Order. In such projects, contract vendor agrees to post wage rates at the work site and submit a copy of their payroll to the member for their files. In addition, to comply with the Copeland Act, contract vendor must submit weekly payroll records to the member. Contract vendor must keep records for three years and allow the federal grantor agency access to these records, upon demand. Contract vendor also agrees to comply with State of Arizona Executive Order 75-5, as amended by Executive Order 99-4.

When working on any projects funded with federal grant monies, contract vendor agrees to comply with the administrative requirements for grants and cooperative agreements to state, local and federally recognized Indian tribal government contract provisions.

The forms listed below are incorporated by reference into this solicitation and any resultant contract.

- HUD-5369, Instructions to Bidders for Contracts, Public and Indian Housing Programs
- HUD-5369-A, Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs
- HUD-5369-B, Instructions to Offerors Non-Construction
- HUD-5369-C, Certifications and Representations of Offerors Non-Construction Contract
- HUD-5370, General Conditions of the Contract for Construction
- HUD-5370-C1, General Conditions for Non-Construction Contracts Section 1 (With or Without Maintenance Work)
- HUD-5370-C2, General Conditions for Non-Construction Contracts Section 1 (With Maintenance Work)

For federally funded projects only, the requirements of an applicable form shall supersede conflicting requirements in this solicitation. The forms may be accessed via HUDClips (<http://www.hud.gov>).

8.2. Compliance with workforce requirements: Pursuant to ARS § 41-4401, contract vendor and subcontractor(s) warrant their compliance with all federal and state immigration laws and regulations that relate to their employees, and compliance with ARS § 23-214 subsection A, which states, "...every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program." [To register for E-Verify, go to: <https://e-verify.uscis.gov/enroll/startpage.aspx>.]

Mohave reserves the right to cancel or suspend the use of any contract for violations of immigration laws and regulations. Mohave and its members reserve the right to inspect the papers of any contract vendor or subcontract employee who works under this contract to ensure compliance with the warranty above.

8.3. Contract vendor employee work eligibility: By entering into the contract, contract vendor warrants compliance with ARS § 41-4401, ARS § 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. Mohave and/or Mohave members may request verification of compliance from any contract vendor or subcontractor performing work under this contract. Mohave and its members reserve the right to confirm compliance. Should Mohave or its members suspect or find that the contract vendor or any of its subcontractors are not in compliance, Mohave may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contract vendor. All costs necessary for compliance are the responsibility of the contract vendor.

8.4. Davis-Bacon wage decisions: For federally funded projects subject to the Davis-Bacon Act, the member shall specify the applicable Davis-Bacon wage decision, prior to the contract vendor providing a firm price quotation for the proposed project. The wage decision shall be identified by the WD Number, modification number, and date of the wage decision. Davis-Bacon wage decisions may be accessed via www.wdol.gov or by requesting a copy from the member.

8.5. Non-compliance: All federally assisted contracts to members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by contract vendor. In projects that are not federally funded, bidder must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee.

8.6. Offshore performance of work prohibited: Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work/services that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the state shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

8.7. Terrorism country divestments: In accordance with ARS § 35-392, Mohave and its members are prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the contract, contract vendor warrants compliance with the Export Administration Act.

9. FORCE MAJEURE

Except for payments of sums due, neither party shall be liable to the other, nor be 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, including, but not limited to the following: acts of God (e.g. fire, flood, snow, earthquakes, tornadoes, violent winds, hail storms); acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; lockouts; injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring it notifies the other party of the existence of the force majeure, and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the contract. Force majeure shall not include late deliveries of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences. If either party is delayed at any time by force majeure, the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours.

10. INDEMNIFICATION

10.1. General indemnification: To the extent permitted by law, Mohave and its members shall be indemnified and held harmless by contract vendor for its vicarious liability as a result of entering into this contract. Each party to the contract is responsible for its own negligence.

10.2. Modification by member: Contract vendor shall have no obligation with respect to any patent and copyright infringement claim based upon member's modification of the equipment and/or software, or its operation or use with apparatus, data or programs not furnished by contract vendor. However, one member's action will not preclude contract vendor's obligation to others not having modified their equipment or software.

10.3. Patent and copyright indemnification: To the extent permitted by law, contract vendor shall indemnify and hold harmless Mohave and its members against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of contract performance or use by Mohave and its members of materials furnished or work performed under this contract. Mohave and its members shall reasonably notify contract vendor of any claim for which it may be liable under this paragraph.

11. LICENSES

Contract vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by contract vendor. Contract vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Mohave reserves the right to stop work and/or cancel the contract of any contract vendor whose license(s) expire, lapse, are suspended or terminated.

12. OFFER ACCEPTANCE PERIOD/WITHDRAWAL

12.1. Late bids: Except as authorized by Arizona procurement rules and code, late bids shall not be considered. Bidder shall be responsible for all shipping costs when requesting the return of a late bid.

12.2. Withdrawal of bid: A bidder may withdraw a bid in writing at any time before bid opening if the withdrawal is received before the bid due date and time at the location designated in the invitation for bids for receipt of bids. After the opening time and date, bids may not be withdrawn, except as allowed by Arizona procurement rules and code.

13. ORDERING CYCLE

13.1. Acceptance of orders: This contract is for the sole use of Mohave and its members. All quotations provided to members must be based on prices in the contract and include the correct Mohave contract number. Contract vendor may only refuse a Mohave reviewed order under this contract after providing written documentation acceptable to Mohave describing the circumstances that warrant refusal. Improper documentation and/or frequent refusals may result in contract cancellation. Mohave may require the contract vendor to reject any purchase orders received from members based on this contract that may not comply with Mohave's rules, processes or standards.

13.2. Audit of contract activity: Mohave will audit some of the purchases made under this contract. The contract vendor agrees to provide all documentation necessary for Mohave to audit purchases made under contract, including invoices, credits and statements issued to members, in a timely fashion.

13.3. Contract vendor contacts: Contract vendor agrees to assign only one contact person for each of the following: accounting, audit, contract administration, escalation, main member contact, open order/status report, and reconciliation. These contacts may be the same person, with the exception of the escalation contact. The name(s) of the contact persons will be provided to Mohave.

13.4. Open order and status reports: Mohave will send contract vendor open order and status reports on a periodic basis. Contract vendor agrees to reply to information requests in a timely fashion.

13.5. Orders in process: Member purchase orders dated on or before the contract cancellation and/or expiration date, will be processed and are considered valid until order fulfillment, or cancellation by the member. Any such orders must be in the possession of Mohave within a reasonable amount of time.

13.6. Purchase verification: It is the member's independent responsibility to verify that quotations and purchase orders comply with the terms of the award of a contract or procurement.

13.7. Quotations: Quotations with no end date are considered invalid after sixty (60) days from the issue date.

14. OVERVIEW

14.1. Advertising: Bidder shall not advertise or publish information concerning this solicitation prior to an award being announced by Mohave. After award, contract vendor(s) may advertise the availability of products and services to members. Any promotional marketing materials using the Mohave logo must be approved by a Mohave Contract Specialist in advance.

14.2. Modification of contract: An awarded contract may be amended for a variety of reasons. Contract modifications will be issued as deemed necessary by Mohave to address contractual issues that may arise.

- 14.3. Applicable law:** Contract shall be governed by the laws of the State of Arizona, and suits pertaining to the contract may be brought only in courts in the State of Arizona.
- 14.4. Application of law:** The Arizona Procurement Code, the Arizona State Board of Education School District Procurement Rules, and the Uniform Commercial Code (UCC) as adopted by the State of Arizona, are part of this document as if fully set forth herein. Any provision or clause required by law, rule or regulation to be included in the contract will be read and enforced as if in the contract, whether or not physically included. If any such provision is not included, or is not correctly included, contract will be amended in writing to make such inclusion or correction upon application from either party to contract.
- 14.5. Arbitration:** After exhausting applicable administrative review, the parties to this contract may agree to resolve disputes arising out of or relating to this contract through arbitration, to the extent allowed by law.
- 14.6. Assignment:** Contract vendor shall assign no right or interest in this contract without prior written permission from Mohave. No delegation of any duty of contract vendor shall be made without prior written permission from Mohave. Mohave shall not unreasonably withhold approval and shall notify contract vendor of its decision within fifteen (15) days of receipt of written notice from contract vendor.
- 14.7. Audit rights:** In accordance with applicable Arizona law, contract vendor's and subcontractor's books and records related to this contract may be audited at a reasonable time and place, for five years after completion of the contract.
- 14.8. Availability of funds:** Member fund availability is unknown to Mohave at the time this solicitation was issued. Use of any contract awarded by Mohave will be conditioned upon the availability of member funds.
- 14.9. Bid opening:** Bids shall be opened immediately following the bid due date and time. Sample pricing will be publicly read and recorded in the presence of witnesses. All other information in the bids shall remain confidential until after award of contracts, with the exception of review by Mohave staff and selected evaluators.
- 14.10. Brand names:** The names of major businesses and their products that appear without the trademark or service mark remain the property of their respective owners.
- 14.11. Captions, headings and illustrations:** The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of perusal only, and in no way define, limit or describe the scope or intent of the request.
- 14.12. Contract claims or controversies:** The requirements of the Arizona procurement rules and code shall govern any contract awarded as a result of this solicitation, as well as any contract claims or controversies associated with it.
- Formal contract claims and controversies between a member and contract vendor shall be resolved in accordance with R7-2-1155 through R7-2-1159, or ARS, Title 41, Chapter 23, Article 9, as applicable. The member's authorized representative shall serve as the district representative for resolution of such claims and controversies. ARS, Title 41, Chapter 23, Article 9 and the rules promulgated under it, or R7-2-1155 through R7-2-1159, as applicable, provide the exclusive procedure for asserting a cause against the member under the contract.
- 14.13. Contract placed on hold:** Mohave shall have the ability to place a contract on hold, if it is deemed necessary to address ongoing problems with an awarded contract. Details of the decision to place the contract on hold shall be provided in a written deficiency notice. A reasonable amount of time shall be provided to contract vendor to address issues in the written deficiency notice.
- 14.14. Definition of time:** Periods of time, stated as a number of days, shall be in calendar days, not business days.

14.15. Eligible agencies: Any contract awarded from this solicitation shall be available to all Mohave members. Member is defined as a local or public procurement unit, or a governmental public entity that is a political subdivision for purposes of federal income tax, or a nonprofit educational or public health institution that is a political subdivision for purposes of federal income tax or meets the requirements of Section 115 of the Internal Revenue Code. Mohave has over 430 members including public school districts, community colleges, city and county governments and political subdivisions throughout Arizona. A list of members may be found on Mohave's website, www.mesc.org. Actual use of any contract will be at the sole discretion of Mohave's members.

14.16. Novation: If contract vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Mohave reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contract vendor.

14.17. Order of precedence: In the event of a conflict in the provisions of the contract as accepted by Mohave, the following order of precedence shall prevail:

1. Special terms and conditions
2. General terms and conditions
3. Scope of work/services and specifications
4. Attachments and exhibits
5. Documents referenced or included in the solicitation

14.18. Pricing extension errors: In case of error in extension of prices in the bid, unit prices shall govern.

14.19. Relationship of the parties: Vendors receiving contracts under this solicitation are independent contractors. Any party to the contract shall not be deemed to be the employee of another party to the contract.

14.20. Removal from prospective bidders list: Any bidder submitting a perfunctory bid with no serious intent of being accepted may be removed from Mohave's prospective bidders list. Any vendor not responding to two (2) consecutive Invitations for Bid for similar procurements may be removed from the prospective bidders list for those items or services. A "no bid" response or request to remain on the list is sufficient to keep a vendor on the prospective bidders list.

14.21. 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.

14.22. Successful performance: The sections of solicitation defining the scope of services, requirements, qualifications, etc., are not to be construed as a complete listing that exempts successful bidder from reasonable services required to ensure successful performance under the contract.

15. PAYMENT

15.1. Billing: All invoices shall list the applicable member purchase order number and Mohave contract number. Contract vendor will invoice members directly. All transactions are payable in U.S. currency only.

15.2. Contacting member about payment: Contract vendor may contact member directly for payment for a product or service delivered to the member under the contract. Such contact shall be professional and courteous.

15.3. Contract vendor invoice: Contract vendor shall invoice member after delivery of goods and/or services. Goods and services shall be invoiced at applicable contract prices, which include Mohave's 1% administration fee. Invoice must include member purchase order number and Mohave contract number.

Mohave's administration fee is included in the invoice amount paid by the member. Contract vendor shall remit administration fee to Mohave monthly. Administration fee shall be calculated at .0099 of the subtotal amount. The Mohave administration fee shall not be calculated on ancillary charges (e.g. performance bonds, shipping, transaction privilege tax, transportation charges, mileage, lodging, meals and incidental expenses (M&IE), permits, etc.).

15.4. Contract vendor payment: Member shall issue payment to contract vendor after receipt of invoice.

15.5. Correct billing: Contract products/services may not be invoiced greater than the purchase order. If incorrect invoices are discovered, contract vendor must correct invoices resulting in excess charges, no matter the cause of the error. Any excess payment must be returned to member within the time allowed by law, in the form of a check or credit memo, as determined by the member.

If a member is invoiced at less than contract prices, contract vendor will invoice the member for the difference unless Mohave approves the undercharge.

If contract pricing in effect on the contract has gone down between the time of the order and the invoice date, contract vendor may invoice at the current contract price.

15.6. Credit hold: Contract vendor agrees to advise Mohave's Procurement Manager of a member(s) being placed on credit hold, within five (5) days of the action.

15.7. Payment time: Payment terms are net thirty (30) days from receipt of contract vendor's invoice.

15.8. Progress payments: Members may make progress payments under the following conditions:

- 1) Member and contract vendor agree to the terms of the progress payments prior to issuing a purchase order;
- 2) the purchase order describes the amounts/percentages to be paid and the dates/frequency of payment;
- 3) member accepts responsibility for verifying the validity of each payment application;
- 4) payments are made only after goods and/or services are verified; and
- 5) any such payments be made in full compliance with member's local governing entity rules and any and all other applicable state rules and regulations.

15.9. Quick pay discounts: Quick pay discounts may be offered to members, provided they have received the materials or services, and that such discounts are available equally to all members. Mohave must approve such discounts in writing and before they are offered to members.

15.10. Reporting and payment of administration fees to Mohave: The contract vendor agrees to provide a Reconciliation Report detailing activity under the contract, and payment for Mohave administration fees for invoices paid in the previous month. Items in the report must include member names, PO numbers, amounts, administration fees, invoice numbers, invoice dates and credit/return information for all invoices paid in the prior month. Payment and report are due as per a schedule agreed upon by Mohave and contract vendor. The initial due date shall be the 10th, 15th, 20th, 25th or 30th of the following month and will be specified in an award notification letter. If no invoices were paid under the contract in the previous month, the contract vendor will provide notice of no activity. A sample reconciliation report will be made available upon award of contract.

Make Mohave administration fees payable to Mohave Educational Services Coop., Inc. Payments shall be mailed to:

625 E. Beale St.
Kingman, AZ 86401

16. PREPARATION OF BID and BID FORMAT

16.1. Modification of bid: A bidder may modify a bid in writing at any time before bid opening if the modification is received before the bid due date and time at the location designated in the invitation for bids for receipt of bids.

16.2. Bid forms: The forms and format contained in the solicitation shall be used. Bidders may reproduce the forms and retype the information, but all of the required information must be presented in the tab order requested. Electronic or faxed bids shall not be considered.

16.3. Bidder responsibility: Bidder shall examine the entire solicitation, seek clarification of any item or requirement that may not be clear, and check all responses for accuracy before submitting bid. Failure to examine any requirements shall be at bidder's risk. Negligence in preparing a bid confers no right of withdrawal after due date and time.

16.4. Cost of bid preparation: Mohave will not reimburse the cost of developing, presenting, or providing any response to this solicitation.

17. PRODUCT LINES

- 17.1. Current products:** Bids shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the bid is submitted.
- 17.2. Discontinued products:** If a product or model is discontinued by the manufacturer, contract vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model. New products shall be submitted for approval following the process detailed in the Special Terms and Conditions (see **Pricing, New catalogs/pricelists**), prior to being offered to members.
- 17.3. New products/services:** New products and/or services that meet the scope of work/services may be added to the contract. Contract vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Mohave may require additions to be submitted with documentation from members demonstrating an interest in, or a potential requirement for, the new product or service. New products/services must be submitted and approved by Mohave, prior to being offered to member. Mohave may reject any additions without cause.
- 17.4. Options:** Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 17.5. Product line:** Bidders with a published catalog may submit the entire catalog. Mohave reserves the right to select products within the catalog for award without having to award all contents. Mohave may reject any addition of equipment options without cause.

18. PROTESTS

Protests shall be filed with Julia E. Tribbett, the Executive Director of Mohave (the District Representative), and shall be resolved in accordance with Arizona Procurement rules and code, ARS, Title 41, Chapter 23, Article 9 and State Board Rules R7-2-1001 through R7-2-1196. *A protest must be in writing and must be filed with the Executive Director of Mohave at 625 E. Beale Street, Kingman, Arizona, 86401.* Protests based upon alleged improprieties in a solicitation shall be filed before the due date and time for responses to the solicitation. The interested party shall file the protest within ten (10) days after Mohave makes the procurement file available for public inspection. A protest filed on the tenth day must be received by 5:00 pm, local AZ time. The interested party may file a written request for an extension. The written request shall be filed before the time limit specified above and shall set forth good cause as to the specific action or inaction of Mohave that resulted in the interested party being unable to file the protest before the time limit specified above.

A protest shall be in writing and shall include the following information:

- The name, address and telephone number of the interested party;
- The signature of the interested party or the interested party's representative;
- Identification of the solicitation by contract number;
- A detailed statement of the legal and factual grounds of protest including copies of any relevant documents;
- The form of relief requested.

Should Mohave prevail in an appeal of a decision issued by the Executive Director, appellant waives any objection to the hearing officer awarding Mohave its reasonable attorneys fees and costs along with the costs for the hearing.

19. RIGHT TO ASSURANCE

Whenever one party to the contract has a good faith reason to question the other party's intent to perform, he may demand that the other party give written assurance of its intent to perform. If a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory breach of the contract.

20. SAFETY STANDARDS

Items supplied under the contract shall comply with applicable Occupational Safety and Health Standards of the Arizona Industrial Commission, National Electric Code, and National Fire Protection Association Standards.

21. SHIPPING

21.1. Shipping terms/transfer of title: Shipments shall be F.O.B. destination. Title and risk of loss of material shall not pass to member until member receives the material at delivery point, unless otherwise provided in the contract.

21.2. Shipment under reservation: Contract vendor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

21.3. Shipping charges: Prices that include shipping to any location in Arizona, delivered to the specific receiving point identified in the purchase order, are preferred. If shipping is charged, it shall be that member is not charged more than the actual invoiced amount for shipping, and is prepaid by the contract vendor (PP&A). It is the member's responsibility to confirm shipping charges under the contract.

21.4. Shipping errors/risk of transportation: Shipping errors will be at contract vendor's expense. If contract vendor ships a product that was not ordered, contract vendor shall pay for return shipment at the convenience of member. All risk of transportation and all related charges shall be contract vendor's responsibility. Contract vendor shall file all claims for visible or concealed damage. Member will notify contract vendor promptly of any damaged goods and shall assist contract vendor in arranging for inspection.

22. SUSPENSION OR DEBARMENT STATUS

Bidder shall include a letter in its bid notifying Mohave of any debarment, suspension or other lawful action taken by any federal, state or local government within the last five years that precludes bidder or its employees from participating in any public procurement activity. Such letter shall provide name and address of the public procurement unit, effective date, duration, and relevant circumstances of the suspension or debarment. Failure to supply such letter or not disclose all pertinent information shall result in cancellation of any contract.

23. TAXES

23.1. Federal Excise Tax: Most members are exempt from paying Federal Excise Tax.

23.2. Payment of taxes: Member is responsible for payment of all taxes listed on the invoice. Contract vendor is responsible for collecting such taxes and shall forward all taxes to the proper revenue office.

23.3. Pre-tax prices: Prices shall not include applicable state and local taxes. All applicable taxes must be listed as a separate item on all invoices and will be paid by member issuing the purchase order.

23.4. Property taxes: Arizona public agencies may not pay state property taxes. (Arizona Constitution, Article 9, Section 2)

23.5. Reservation or tribal tax: If goods or services are subject to reservation or tribal tax, contract vendor shall include such taxes as a separate item on the original invoice to the member.

23.6. Transaction Privilege Tax (Sales Tax): Most members are taxable. Transaction Privilege Taxes in Arizona may include state, county and city taxes. The tax status of the ordering member determines if and when Transaction Privilege Taxes are to be applied. Documentation for members who do not pay Transaction Privilege Tax is available upon request from member. Contract vendor is responsible for charging taxes correctly.

23.7. Taxes on construction: Contract vendors for construction-related projects must follow the latest Arizona Administrative Code, Department of Revenue, transaction privilege tax procedure as described in R-15-5-602. Since the work is performed for and payments will be received from Mohave's members, the contract vendor is considered a prime contractor by R-15-602 (C, 1, a). Transaction privilege taxes on contracting shall be separately stated on invoices.

Standard Terms and Conditions for Construction

Place after Tab 1c

1. **BID SECURITY**

- 1.1. Amount of bid security:** All bidders for a contract under this IFB shall include acceptable bid security in the amount of **\$100,000** with the submission of their bid.
- 1.2. Bid security requirement:** School procurement rules [R7-2-1102 (A)] and as applicable in ARS § 34-222 and 41-2573, require that all competitive sealed bidding for construction have bid security, if the amount of the construction contract will exceed the amount established by ARS § 15-213(A). Bid security as a percentage of the bid amount is unacceptable, as this is a term contract with no specific bid amount. Bid security must be in the amount stated above in "Amount of bid security."
- 1.3. Form of bid security:** Acceptable bid security for this IFB will be a certified or cashier's check, or an annual or one time bid bond underwritten by a surety company licensed to issue bid bonds in Arizona [R7-2-1102 (B, C), ARS § 34-222 and 41-2573]. Bid security may be provided using the form found in the primary contract document pages of this IFB, with the principal being the prime contractor and the Obligee being Mohave Educational Services Cooperative, Inc. An agent of your licensed bonding agency shall sign the letter. If the original letter is not signed and/or has conflicting information, it shall render your bid nonresponsive.

2. **CHANGE ORDERS**

- 2.1. Adherence to specifications and drawings:** The contract vendor shall follow the requirements of all specifications and drawings as closely as actual construction and work of contract vendors shall permit. Should existing conditions or limitations require a major change or rearrangement, the change shall be allowed only upon issuance of a written change order.
- 2.2. Change order requirement:** Member and contract vendor shall establish a procedure for identifying and approving changes to the work. Member shall notify Mohave of any change that revises the cost of the project. Contract vendor shall not begin the revised work prior to receipt of the Mohave reviewed member change order.

Contract vendor agrees to follow all applicable rules and regulations for any change orders, including R7-2-1005 and as applicable in ARS § 41-2552.

Change orders shall be properly documented in writing. Minor changes mutually agreed between the member and the contract vendor that do not involve compensation may be made without informing Mohave, unless such change significantly modifies the scope of work and needs to be documented.
- 2.3. Costs for changes associated with improper checking or coordination:** The cost of any change in construction due to improper checking of site and/or other conditions, or coordination by contract vendor, shall be borne by the contract vendor, and the contract vendor shall not be entitled to reimbursement for such costs.

3. **CONSTRUCTION CONTRACTS**

- 3.1. Cancellation by Mohave:** Mohave reserves the right to cancel a contract resulting from this IFB if the original contract holder is sold and ownership is transferred to a new party. If Mohave cancels the contract, the cancellation clause will be exercised, as required.
- 3.2. Compensation:** Compensation for received goods, terms of progress payments, and a schedule of payments should be described in the contract. The agreement must state that Mohave will not be responsible for any late fees due the contract vendor by the member.

3.3. Member delays: As required by ARS § 15-213 (D), the contract vendor will negotiate with member for the recovery of damages related to expenses incurred by the contract vendor for a delay for which the member is responsible, which is unreasonable under the circumstances and which is not within the contemplation of the parties to the contract between the two parties. Any such negotiations will not void any provisions between the parties that require notice of delays, provide for arbitration or other procedure for settlement or provides for liquidated damages.

3.4. Construction contract requirement: In any contract between the contract vendor and a member based on this contract, the terms and conditions of this contract will prevail. In any contract between the member and the contract vendor, the scope of work will include all specifications, drawings, and other official documents. All applicable codes around which the contract is made will be included, as will any technical specifications and general conditions. The contract vendor will acquire and pay for all permits and approvals from local, county, state and federal offices needed to accomplish the work. Contract vendor shall be entitled to direct reimbursement for the cost of such permits.

3.5. Form of construction contracts: A contract between the member and the contract vendor for construction shall be an industry standard agreement. The parties may agree to use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.

3.6. Member representative: All formal contact between the contract vendor and/or contract vendor's personnel and the member shall be processed through the member representative. The member shall designate the member representative at the time of purchase.

3.7. Terms of acceptance: Terms for acceptance by the owner and title to work must be clearly agreed upon and described in the contract. If any part of the construction requires the member to assume control before the completion, this needs to be defined. Both parties must agree on the definition of what constitutes final acceptance. Upon completion of the project, the worksite shall be left in a condition equal to or better than before the project.

3.8. Void provisions: A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against public policy of the State of Arizona and is void and unenforceable. (ARS § 15-213 and 34-227)

3.9. Work performed by the member: Work to be performed by the member must be clearly described and agreed upon prior to project start up.

4. CONSTRUCTION SCHEDULE

4.1. Schedule adjustment: The member retains the right to extend the schedule of work or to suspend the work, and to direct the contract vendor to resume work when appropriate. The agreement must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced per approved contract pricing as allowed in the agreement.

4.2. Schedule requirement: A schedule for performance of work that can be met without planned overtime is the responsibility of the contract vendor.

4.3. Work crew size: The cost for each project shall include all costs of all necessary trained personnel to complete the project on or before the completion date(s) set forth in the contract. The member shall not incur additional expense for upsized crews, nor overtime costs, which might be necessary for the contract vendor to complete the project on schedule.

5. COORDINATION

5.1. Conflict with member activities: The contract vendor and member shall coordinate activities so as to avoid conflicts. The contract vendor will make every reasonable effort not to interrupt scheduled member activities with work under the contract. The contract vendor will notify the member of any construction work that may negatively impact scheduled member activities due to noise, etc.

5.2. Coordination with other vendors: The contract vendor shall coordinate with other contractors.

5.3. Interruption of other work: The contract vendor shall employ such methods or means as will not cause any interruption of, or interference with, work of any other contractor on the project site.

6. DELIVERY OF CONSTRUCTION MATERIALS:

6.1. Condition of materials on delivery: The contract vendor will deliver materials to the worksite in new, dry, unopened, and well-marked containers showing product and contract vendor's name. Damaged or unlabeled materials will not be accepted.

6.2. Delivery requirement: The contract vendor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the member's representative.

6.3. Precautions: The contract vendor shall take all necessary precautions to protect its materials from damage, theft and misuse. The member shall have no responsibility for such precautions or protection.

6.4. Rejected and damaged material: Damaged or rejected materials shall be immediately removed from the work area.

7. INSURANCE

7.1. Course of Construction Insurance: Upon request from member, contract vendor shall purchase and maintain course of construction insurance equal to the estimated replacement cost of the property after completion of the entire work at the site as called for in the purchase order. The insurance form will be an "all risk" type policy with standard exclusions. Coverage will include temporary structures, scaffolding and office trailers at the site, as well as materials and equipment at the site destined to become a permanent part of the property. Any additional costs associated with course of construction insurance must be identified in the pricing workbook.

7.2. Deductibles: Contract vendor shall pay the deductibles required by the insurance provided under this agreement.

7.3. Indemnification: During the life of the contract, contract vendor agrees to save and hold harmless Mohave and/or its members from any and all liability for loss or damage to persons or property arising out of the work required by the contract. Contract vendor further agrees to waive any right of recovery against Mohave and/or its members for damage to the property of contract vendor, whether caused by negligence on the part of Mohave and/or its members or otherwise. This provision includes specifically the waiver of right of recovery against Mohave and/or its members for fire damage to property under contract and not yet formally accepted by member even though said property at the time of loss may be occupied, in whole or in part, by member.

7.4. Proof of Insurance: Evidence of the required insurance shall be provided by means of a certificate of insurance naming Mohave as the certificate holder. In addition, contract vendor must be willing to provide, upon request, identical certification of insurance to any member using this contract. Upon request, contract vendor shall provide member with a certificate of insurance naming the member as an additional insured. All insurance policies shall include a clause to the effect that the policy shall not be cancelled or reduced, restricted or limited until thirty days after the member has received written notice, evidenced by a return receipt of a registered or certified letter, of the proposed action.

7.5. Scope of Insurance: Contract vendor's insurance shall provide adequate protection for contract vendor and contract vendor's subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations are by the insured or by anyone directly or indirectly employed by the insured. All insurance must be written by companies incorporated within the United States (exclusive of Territories or Possessions) and licensed or authorized to do business in Arizona.

8. LABOR PRACTICES

- 8.1. Labor practices:** The contract vendor must agree to treat its labor in keeping with its labor contract agreement and to the best interest of the member. Any overtime practices or retroactive agreements with labor unions that would be to the detriment of the member must be limited to only those approved by the member.
- 8.2. Labor requirements:** The method and manner of performance must be stated: employees of the contract vendor are not employees of the member; the level of competency of the personnel will be subject to approval by the member; the contract vendor must agree to comply with all local, state and federal laws; adjoining property owners must not be annoyed by noise, pollutants, material hauling operations; procedures for dealing with fire, theft, and storm damage must be established; methods the contract vendor will use to guarantee safe job practices relating to the health and welfare of the member employees and contract vendor employees will be clearly stated.
- 8.3. Quality of work:** All work under the contract shall be accomplished by experienced craftsmen, helpers and laborers under the supervision of the foreman or supervisor.
- 8.4. Removal of Employee or Representative:** The member shall have the right to require the contract vendor to remove from the project any employee or representative of the contract vendor, its subcontractors or suppliers that the member may deem incompetent, careless, insubordinate, or otherwise unacceptable.
- 8.5. Supervision:** The contract vendor shall furnish the services of an experienced foreman or supervisor who will continually be in charge of work on the project. The foreman or supervisor shall provide continuous supervision, coordination and inspection of the work required under the contract.

9. LIQUIDATED DAMAGES

Any agreements on liquidated damages and early completion incentives will be between the member and the contract vendor and must be agreed upon in writing prior to start up. If the member declines a liquidate damages or early incentive agreement, the contract vendor will obtain a written and signed statement to this effect. Mohave will not be a party to liquidated damages or early completion incentive agreements.

10. MEMBER COSTS

Temporary electrical service and the cost for power, the cost for water, and other member costs will be identified in writing and agreed upon.

11. PERFORMANCE AND PAYMENT BONDS

- 11.1. Issuing performance and payment bonds:** Upon execution of a contract between a member and the contract vendor, performance and payment bonds shall be provided to the member as required in ARS § 34-222, 34-223, 28-6923, 41-2574, or R7-2-1103 (A, B, C, D), as applicable. The contract vendor agrees to notify the member in writing of this requirement before accepting any work orders.

The contract vendor will supply Mohave with a copy of the bonds upon request. If the contract vendor fails to deliver any required performance or payment bond, the contract with Mohave may be cancelled.

Members who elect to waive these bonds must indicate their decision, in writing, to Mohave. For members who are required to obtain performance and payment bonds per the above requirements, contract vendor agrees to provide these bonds to the member.

- 11.2. Payment bond requirement:** An irrevocable payment bond in an amount equal to 100% of the price specified in the contract between the member and the contract vendor shall be executed by a surety company authorized to do business in Arizona. This bond will protect all persons supplying labor and material to the contract vendor for the performance of the work provided in the contract.
- 11.3. Performance bond requirement:** An irrevocable performance bond in an amount equal to 100% of the price specified in the contract between the member and the contract vendor shall be executed by a surety company authorized to do business in Arizona.

12. PROGRESS PAYMENTS

12.1. Progress Payments on Construction: R7-2-1105 allows for progress payments if the contract vendor agrees to adhere to ARS § 41-2577 (B) (D) (F) and as applicable in ARS § 34-221. All progress payments must be invoiced to the member; it is the responsibility of the member to review and approve any estimates of work completed. If the member issues a written statement to the bidder that the estimate of work is not approved and certified, the member may withhold an amount from the progress payment the member reasonably expects to incur in correcting the deficiency set forth in the written finding, as permitted in R7-2-1105 (A). In such cases, the bidder agrees to hold Mohave harmless for any deficiency of payment.

Progress payments may be made to the contract vendor on the basis of a duly certified and approved estimate of work performed during the preceding month. The contract vendor must agree to pay any subcontractors or material suppliers within seven days of their receipt of the progress payment, unless otherwise agreed on in writing between the parties.

12.2. Schedule of payments: Once all bonds are in place, the contract vendor and the member will agree upon a schedule of payments based on identifiable milestones.

If any payment is delayed beyond 30 days from the due date, the bidder agrees not to charge Mohave interest on the late payment. Any late charges will be the total responsibility of the member. The bidder may extend any due date to avoid the requirement to pay interest in R7-2-1105 (D) and ARS § 41-2577 (E) and as applicable in ARS § 34-221.

Acceptance of final payment is a waiver of all claims except unsettled claims previously made in writing.

12.3. Subcontractor notification: A subcontractor to the prime contractor may request, in writing, that member notify the subcontractor in writing within five (5) days from payment of each progress payment made to the prime contractor [R7-2-1105 (C) and ARS § 41-2577 (C) and as applicable in ARS § 34-221]. Upon request, the prime contractor must provide Mohave or the members with a contact name, title, company name, mailing address and fax number for all subcontractors and suppliers that are covered by a payment bond.

13. PROJECT ADVERTISING

The contract vendor must agree that the member reserves the right to release information about the project and that any advertising of the project by the contract vendor must be approved by the member.

14. PROJECT COMPLETION

14.1. Project documents: Upon completion of the work, the contract vendor shall present the member with all documents necessary to closeout the project. Maintenance manuals, drawings, warranties on installed equipment, etc., shall be given to the member.

14.2. Unfinished work: Even if final payments are made, if the member discovers an unfinished job that should have been completed, the contract vendor shall complete the work in a timely fashion at no additional cost.

15. PUBLIC WORKS

15.1. Preservation: The contract vendor shall be responsible for the preservation of all public and private property included on or adjacent to the worksite. This requirement shall apply to the surface and hidden features of the property.

15.2. Receipt of public funds: Contract vendors and subcontractors will meet the requirements of ARS § 34, Article 3, for eligibility to receive public funds.

15.3. Residency requirement: ARS § 34-302 states that only persons who have been for not less than one year a bona fide resident of Arizona shall be employed in the performance in any public work. A public works contract is defined in ARS § 34-321 as "*a contract to which the state or a political subdivision is a party involving the employment of laborers, workmen or mechanics in the construction, alteration or repair of public buildings or improvements.*" It shall be the responsibility of the contract vendor to comply with these laws, when applicable.

15.4. Restoration: The contract vendor shall repair, rebuild or otherwise acceptably restore any property on or adjacent to the worksite that was damaged during the course of work on the project. Such restoration shall be at the contract vendor's expense, and is not subject to reimbursement by the member.

15.5. Rules, regulations and codes: Construction work on public buildings shall be in compliance with the state fire code unless a fire code has been adopted by the city, town, county or fire district in which the building is located. Public buildings shall be constructed in compliance with applicable building, plumbing, electrical, fire prevention and mechanical codes adopted by the city, town, county or fire district in which the building is located. If a public building is built in an area that has not adopted local codes, the building shall be designed or constructed according to the state fire code adopted by the state fire marshal and the building, plumbing, electrical, fire prevention and mechanical codes that apply in the largest city in the county in which the building is located. Public buildings are subject to those codes that apply and are in effect when the building is designed or constructed and to the currently adopted codes when a building is found to be structurally unsafe, without adequate egress, or a fire hazard or are otherwise dangerous to human life. "Public Building" means a building or appurtenance to a building that is built in whole or in part with public monies (see ARS § 34-461).

16. RETENTION

16.1. Retention requirement: Ten (10) percent of all contract payments shall be retained by the member as insurance of proper performance of the contract vendor. Contract vendor agrees to identify the amount to be retained on invoices to member for each progress payment.

When fifty (50) percent of the work is completed, one half of the amount retained shall be paid to the contract vendor if the contract vendor requests payment and if the member is satisfied with the progress of the work.

After the work is fifty (50) percent completed, no more than five percent of the amount of any subsequent progress payments shall be retained, unless the governing board of the member determines satisfactory progress is not being made, at which point ten percent retention shall be reinstated.

16.2. Substitute security: If the member and the contract vendor agree to a substitute security, the agreement must be in full compliance with R7-2-1104 (D, E, F, G), or 41-2576 as applicable to the purchasing member. If a substitute security is agreed to, the contract vendor must provide Mohave and the member with a signed and acknowledged waiver of any right or power of the obligor to set off any claim against Mohave, or the member in relationship to the security assigned.

17. RULES, REGULATIONS AND CODES

17.1. Certification of personnel regarding renovations, repair, and painting: Personnel performing renovations, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities constructed before 1978, shall comply with Part II, Environmental Protection Agency, 40 CFR Part 745, Lead; Renovation, Repair, and Painting program; Lead Hazard Information Pamphlet (<http://www.epa.gov/>).

17.2. Compliance: All work will be accomplished in conformance to OSHA safety requirements, and any additional federal, state, or local fire or safety requirement. When specifications or scope of work will result in a violation of a code or result in an unsafe condition, the contract vendor must inform the member of the situation. The contract vendor will not construct any device or produce any condition that intentionally violates a fire or safety code or safety standard.

17.3. Hazard notification: Contract vendor must advise member whenever work is expected to be hazardous.

17.4. Liens/serial numbers: All materials shall be free of liens. Bids must be for equipment on which the original manufacturer's serial number has not been altered in any way.

18. SUITS FOR NONPAYMENT OR NONPERFORMANCE

All suits for nonpayment or nonperformance shall be filed as allowed in R7-2-1103 (F).

19. SURETY COMPANIES

Surety company requirements: Surety companies issuing bid bonds, performance bonds and/or payment bonds under this contract must be licensed by the Arizona Department of Insurance. Evidence of such license will be the name of the surety company on the monthly surety listing provided by the Corporate and Financial Affairs Division of the Arizona Department of Insurance (www.id.state.az.us).

20. WARRANTY/MAINTENANCE CONTRACTS

20.1. Extended warranties/service contracts: The contract vendor or a manufacturer may offer extended warranties available at extra cost for members that agree to a maintenance contract. The maintenance contract shall be offered as a separate line item. Upon request, training must be offered by the contract vendor for the maintenance staff of the member and will be arranged before installation as part of the purchase contract. This training shall be priced per contract pricing.

20.2. Warranty work: The contract vendor shall perform all warranty work and remain available to the member should continued service be required after warranty obligations are met.

21. WORKSITE

21.1. Site access: The member shall provide an all-weather road to the site and prepare the site with room for construction equipment.

21.2. Site conditions: The condition of the site before start up shall be agreed upon between the member and the contract vendor and shall be written into the contract.

21.3. Stored Materials: Upon prior written agreement between the contract vendor and member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials shall be provided to member prior to payment. Such materials shall be stored and protected in a secure location, and be insured for their full value by the contract vendor against loss and damage. Contract vendor agrees to provide proof of coverage and/or addition of member as an additional insured upon member's request. Additionally, if stored offsite, the materials shall also be clearly identified as property of member and be separated from other materials. Member shall be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the member, it shall be the contract vendor's responsibility to protect all materials and equipment. The contract vendor warrants and guarantees that title for all work, materials and equipment shall pass to the member upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

General Terms and Conditions and Standard Terms and Conditions for Construction Acceptance Form

Place after Tab 1c

Signature on Page 55 certifies complete acceptance of the General Terms and Conditions and the Standard Terms and Conditions for Construction in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the General Terms and the Standard Terms and Conditions for Construction:

- ☒ We take no exceptions/deviations to the General Terms and Conditions and the Standard Terms and Conditions for Construction.

(Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)

- ☐ We take the following exceptions/deviations to the General Terms and Conditions and the Standard Terms and Conditions for Construction. All exceptions/deviations shall be clearly explained. Reference the corresponding general terms and conditions and/or Standard Terms and Conditions for Construction that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the General Terms and Conditions and the Standard Terms and Conditions for Construction. Provide details on your exceptions/deviations below:

(Note: All requested exceptions/deviations must be clearly explained. Reference the specific terms and conditions that you are taking exceptions/deviations to, detail any proposed substitute terms and conditions, and clearly demonstrate how Mohave and its membership will be better served by the substituted terms and conditions. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.)

Special Terms and Conditions

Place after Tab 1d

The following Special Terms and Conditions are in addition to the applicable General Terms and Conditions and Standard Terms and Conditions for Construction that appear on pages 35 - 53. Please review them and complete the *Special Terms and Conditions Specifications Acceptance Form* (page 34).

1. DELIVERY

- 1.1. Default in one installment to constitute total breach:** Contract vendor shall deliver conforming materials in each installment or lot under this contract and may not substitute nonconforming materials. Mohave reserves the right to declare a breach of contract if contract vendor delivers nonconforming materials to any member under this contract.
- 1.2. Defective goods:** Contract vendor agrees to pay for return shipment of goods that arrive in a defective or non-operable condition. Contract vendor shall arrange for return shipment of damaged or defective goods.
- 1.3. Delivery time:** Failure to deliver any order within the time frame specified on the purchase order may result in cancellation of that purchase order.
- 1.4. Improper delivery:** If the goods or tender of delivery fail in any respect to conform to this contract, member may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest.
- 1.5. Restocking fees:** A restocking fee may only be charged on products ordered and delivered to member's site. Restocking fees in excess of fifteen percent (15%) shall not be allowed. Contract vendor may waive restocking fees. Shipping charges on returns must be identified. Restocking and return shipping charges shall be identified on the price workbook.

2. FORM OF CONTRACT

- 2.1. Contract vendor contract documents:** Mohave will review proposed contract vendor contract documents. Contract vendor's contract documents shall not become part of Mohave's contract with contract vendor unless, and until, an authorized representative of Mohave reviews and approves them. If a firm submitting a bid requires member to sign an additional agreement, a copy of the proposed agreement shall be included with the bid.
- 2.2. Form of contract:** The form of contract for this solicitation shall be the Invitation For Bid, the awarded bid(s), and properly issued member purchase orders referencing the requirements of the Invitation For Bid.
- 2.3. Parol evidence:** The contract represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

3. INSTALLATION

Installation shall be scheduled directly with the member and be done in a reasonable amount of time. Installation shall be in accordance with the manufacturer's instructions and shall be accomplished by skilled and properly licensed individuals.

4. INSURANCE

- 4.1. Liability insurance:** Prior to commencing services under this contract, contract vendor shall procure and maintain during the life of this agreement, comprehensive public liability insurance, to include automobile liability, providing limits of an aggregate amount of not less than \$2,000,000. Evidence of the required insurance shall be provided by means of a current certificate of insurance with the coverage as stated above, with your bid. Before any orders are processed under an awarded contract, contract vendor shall provide a certificate that names Mohave as the certificate holder. **Place after Tab 2b.**

In addition, contract vendor must be willing to provide, upon request, identical certification of insurance to any member using this contract.

4.2. Subcontractor insurance: Prior to commencing any work, any subcontractor shall procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor and member.

4.3. Workers' compensation insurance: Contract vendor shall also procure and maintain during the life of this agreement, workers' compensation insurance for all of contract vendor's employees engaged in work under the contract. All workers' compensation insurance will be in compliance with state statute and evidenced by a certificate of insurance.

5. MAINTENANCE FACILITIES AND SUPPORT

It is preferred that each contract vendor should have maintenance facilities and a maintenance support system available for servicing products throughout Arizona, or the regions specified in their offer. If a third party is used to provide maintenance or warranty work, bidder must include details of any such arrangement in the bid. Trained and qualified technicians shall be available to cover all parts of the state, or specific regions within the state for regional offers. It is preferred that maintenance services are available within 24 hours. Maintenance facilities must have sufficient parts inventory to provide quality service on products sold to members.

6. MANUFACTURER SUPPORT

Bidders submitting bids as a manufacturer's representative must be able, if requested by Mohave, to supplement the bid with a letter from the manufacturer certifying that bidder is a bona fide dealer for the equipment offered, that bidder is authorized to submit a bid on such equipment, and which guarantees that should bidder fail to satisfactorily fulfill any obligations established as a result of the award of contract, the manufacturer will either assume and discharge such obligations or provide for their competent assumption by one or more bona fide dealers for the balance of the contract period.

7. MEMBER AGREEMENTS

Some members may request the addition of specific requirements that would apply to products and services purchased under an awarded contract. These additional requirements shall be addressed through the use of an additional member agreement. In any agreement between the contract vendor and a member based on this contract, the terms and conditions of this contract shall prevail. Contract vendor and member must agree to all provisions in any additional agreements. If agreement requirements result in additional costs to the contract vendor, the contract vendor shall be entitled to direct reimbursement for these costs, in addition and separate from approved contract pricing. A copy of the additional member agreement shall accompany the member purchase order.

8. BID ACCEPTANCE PERIOD

A bid submitted in response to this solicitation shall be valid and irrevocable for ninety (90) days after opening time and date.

9. OVERVIEW

9.1. Bidder qualifications: It is preferred that the bidder has extensive knowledge and at least three (3) years experience with the installation, maintenance and provision of the equipment, or services offered. Mohave reserves the right to accept or reject newly formed companies solely based on information provided in the bid and/or its own investigation of the company.

9.2. Bid Bond: Bidder shall provide an original bid bond or alternate bid security in the amount of **\$100,000**. *Place after Tab 1f.* Note: Bid security as a percentage of the bid value (e.g. – 10% of contract award) is not acceptable.

9.3. Bonding Capacity: The required minimum single job bonding capacity for this contract shall be \$350,000. Provide a letter from your bonding agency describing your current bonding capacity (single and aggregate levels) and how much bonding capacity will be available for this contract. An agent of your licensed bonding agency shall sign the letter. If the original letter is not signed and/or has conflicting information, it shall render your bid nonresponsive. *Place letter from bonding agency after Tab 1f.*

9.4. Order cycle overview:

1. Member forwards purchase orders to Mohave that lists the contract number. Vendor listed on the purchase order is contract vendor.
2. Mohave reviews and emails member order with "*MESC Reviewed*" stamp, to contract vendor and member.
3. Contract vendor provides product/services.
4. Contract vendor invoices member.
5. Member pays contract vendor.
6. Contract vendor sends monthly Reconciliation Report to Mohave.
7. Contract vendor remits administration fee monthly, based on invoices paid.
8. Mohave audits selected purchases.

9.5. Equipment and Services Not Requested: The following items are specifically not allowed in this bid.

1. Engineering or design services.
2. Stand-alone fabric shade structures.
3. Permanent bleachers or bleachers 6 rows or more and exceeding 90 seating positions.
4. Indoor sports equipment and accessories including, but not limited to: balls, rackets, nets and scoreboards.

10. PRICING

10.1. Administration fee: Mohave's 1% administration fee shall be included in bidder's contract price. Contract vendor shall not add the administration fee to approved contract prices. The value of trade-ins or rebates shall not affect the amount of administration fee paid to Mohave.

10.2. Application of pricing: In Mohave's purchase order review process, the date Mohave receives a member purchase order or the date of a valid contract vendor's quote will generally be used to determine the contract pricing that is in effect for that order. The date Mohave receives a member purchase order will only be used to determine the contract pricing that is in effect for an order when a contract vendors quote does not exist or is invalid. However, other factors may apply.

10.3. Basis for pricing: Contract pricing under this IFB must be based upon:

1. Percent of discount(s) off manufacturer's price list(s) or catalog(s);
2. Firm fixed price with economic adjustment (contingencies for economic price adjustments must be identified in the bid); or
3. A combination of the above.

10.4. Catalogs/price lists: A copy of the latest edition of the price list or catalog to which discount shall be applied shall be included with bid. Include a copy of the latest edition of all applicable price lists or catalogs to which discount shall be applied with your bid. Submission of outdated price lists or catalogs may result in rejection of bid.

10.5. Combination pricing: Bids for combination contracts shall clearly identify items covered by discount(s) and those with fixed prices. Prices for such contracts shall be adjusted as identified for the appropriate contract type above.

10.6. Decimal places: Pricing shall use a maximum of three (3) decimal places, unless specified otherwise.

10.7. Discounts: Discounts must clearly identify the percent of discount to apply to the price list. If multiple discounts apply, bidder shall clearly indicate the discounts and applicable materials or services. Bidder shall agree that there will be no reduction in discount(s) during the term of contract.

10.8. Effect of price: No contract shall be awarded solely on the basis of price.

10.9. Established catalog price: The price included in a catalog, price list, schedule or other form that:

- Is regularly maintained by a manufacturer, distributor or contractor.
- Is either published or otherwise available for inspection by customers.
- States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

Established catalog price is referred to as manufacturer's price list, price list, or catalogs throughout this solicitation.

10.10. Fixed prices: Fixed price bids shall include prices for any and all items. Fixed prices shall be firm until each anniversary date of the contract, unless there is an occurrence of one or more allowable economic price adjustment contingencies outlined in the bid. If allowable price adjustment contingencies occur, contract vendor may submit a fully documented request for price adjustment to Mohave. The documentation must substantiate that any requested price increase was clearly unpredictable at the time of bid submittal and results from an increased cost to contract vendor that was out of contract vendor's control.

10.11. Fixed price review: Mohave will review requests for fixed price adjustments to determine if the new prices or another option is in the members' best interests. New fixed prices shall apply to the contract upon approval from Mohave. Price changes shall be a factor in contract renewal.

10.12. Market basket: If bidder is providing an alternative product in the Market Basket, bidder must provide specifications for those products. *White papers are not specifications and are not acceptable.*

10.13. New catalogs/price lists: New price lists, workbooks and/or catalogs may be submitted for review throughout the term of the contract. Mohave will review new price lists, workbooks and/or catalogs to determine if the new prices or an alternative option is in the members' best interests. New price lists, workbooks and/or catalogs shall apply to the contract only upon approval from Mohave. New price lists, workbooks and/or catalogs found to be non-competitive at any time during the contract will be grounds for terminating the contract.

10.14. Overcharges by antitrust violations: Mohave maintains that overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, contract vendor assigns to member any and all claims for such overcharges as to the goods or services used to fulfill the contract.

10.15. Percent of discount as fixed price: Percent of discount bids that are not based upon published price lists or catalogs will be administered as fixed price contracts.

10.16. Price reduction and adjustment: Price reduction may be offered at any time during a contract and shall become effective upon notice of acceptance from Mohave. Special time-limited reductions are permissible under the following conditions: 1) reduction is available to all members equally; 2) reduction is for a specific time period, normally not less than 30 days; 3) original price is not exceeded after the time-limit; and 4) Mohave has approved the new prices prior to any offer of the prices to a member.

10.17. Price workbook: All bidders must complete the 14X-1121 Workbook titled "**14X Playground WB.xls**". Provide a CD, USB, or similar electronic media device with the completed workbook in your response. Paper copies of the workbook are required. Failure to complete and submit the 14X-1121 Workbook shall render your bid nonresponsive. **Place after Tab 3a.** If awarded a contract, all future pricing updates shall be based on the electronic workbook, or similar approved format.

10.18. Reimbursement for transportation, mileage, lodging, meals and incidental expenses (M&IE): Contract vendor may charge for transportation, mileage, lodging and M&IE costs for employees that are required to travel to perform services at member site under this contract. An overnight stay is required for lodging reimbursement. Mileage reimbursement shall be at a specified rate. Transportation charges are separate from mileage, and may include airfare, car rental, etc.

Reimbursements under this section shall not exceed the rates listed in approved pricing, and may not exceed the actual charge. To be eligible for reimbursement, estimated charges must be on the quote and approved by the member. Receipts for such reimbursements must be provided upon request from the member.

10.19. Travel time, mobilization, or trip charges: Contract vendor may charge for travel time, mobilization, or trip charges under this contract. Travel time is a labor rate charged for time in transit to and from a job site, per person. Travel time may be used with mileage reimbursement, but shall be listed separately. Travel time charges are only applicable for out of area employees working in Arizona under this contract. Mobilization or trip charges are charges for the movement of equipment to the jobsite. Charges under this section shall not exceed the rates listed in approved pricing. Such charges must be on the quote and approved by the member.

10.20. Special pricing offers: Special pricing offers (e.g., volume discounts) must apply to all Mohave orders of similar size and scope. Special pricing limited to a single member is not acceptable. Mohave must approve special pricing before it is offered to any member.

10.21. Installation costs: Installation costs shall be based on an hourly rate, a percentage of equipment cost or a total cost for a playground system. If based on an hourly rate, an estimate will be made prior to the installation. The final cost of the installation shall not exceed the estimate without prior written approval from the member and after Mohave's review. If actual installation time is less than the estimate, the actual time be billed.

11. SITE REQUIREMENTS

11.1. Cleanup: Contract vendor shall clean up and remove all debris resulting from their work as required or directed by member. Upon completion of the work, the premises shall be left in good repair and unobstructed condition.

11.2. Contract vendor employee fingerprinting: Contract vendor and its employees or subcontractors working under an awarded contract who are required to provide services on a regular basis at an individual school, shall obtain and present a valid Department of Public Safety fingerprint clearance card in accordance with ARS § 15-512 (H). The fingerprint card shall be issued pursuant to Title 41, Chapter 12, Article 3.1. Charges for such fingerprint checks will be the responsibility of the contract vendor, subcontractor or individual employee as determined by the member.

An exception to this requirement may be authorized in member's Governing Board policy, for persons who, *"as part of the normal job duties of the persons, are not likely to have independent access to or unsupervised contact with pupils."*

Contract vendor and its employees or subcontractors shall not provide services on school district property until so authorized by the school district. Additionally, contract vendor shall comply with applicable governing board fingerprinting policy(ies) at the school district where services are provided.

11.3. Onsite Contract Vendor Responsibilities: The contract vendor is responsible for ensuring that all onsite work performed under this contract meets or exceeds the OSHA standards, and is responsible for ensuring safe work performance of employees and subcontract vendors.

Contract vendor and its employees or subcontractors shall report accidents and incidents immediately to the member's responsible staff or its administration. The contract vendor is responsible for providing and obtaining appropriate medical and emergency assistance and notifying fire and law enforcement agencies, when necessary. Except for rescue and emergency measures, the scene of the accident or incident shall not be disturbed, and the operation shall not resume until authorized by the member's responsible staff or administration. The contract vendor must assist and cooperate fully with the investigation of the accident/incident and ensure availability of all information, personnel and data pertinent to the investigation.

For preemptive purposes, contract vendor and its employees or subcontractors shall immediately report to the member's responsible staff or administration all areas of concern that could potentially lead to accident or injury.

11.4. Preparation: Contract vendor shall not begin a project for which member has not prepared the site. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

11.5. Registered sex offender restrictions: For work to be performed at an Arizona school, contract vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contract vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the member's discretion.

11.6. Safety measures: Contract vendor shall take all reasonable precautions for safety on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contract vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public, and existing structures from injury or damage.

11.7. Smoking: Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

11.8. Stored materials: Upon prior written agreement between the contract vendor and member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the contract vendor against loss and damage. Additionally, if stored offsite, the materials must also be clearly identified as property of member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the member, it shall be the contract vendor's responsibility to protect all materials and equipment. The contract vendor warrants and guarantees that title for all work, materials and equipment shall pass to the member upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

12. SUBCONTRACTORS

12.1. Awarding subcontracts: Bidder agrees that any subcontract competitively solicited by contract vendor will not be awarded solely upon membership or non-membership in a union or professional association.

12.2. Entering subcontracts: Subcontracts shall incorporate by reference the terms and conditions of the Mohave contract.

12.3. Prime contractor: Contract vendor will be considered a prime contractor and not a subcontractor. Neither Mohave nor the member will establish a contractual relationship with subcontractors.

12.4. Subcontracts: No subcontracts shall be entered into with any unlicensed party. Contract vendor must use subcontractors openly, include such arrangements in the bid, and certify upon request that such use complies with the current rules of the Arizona Registrar of Contractors and the Procurement Code. No subcontracting costs may be hidden in a cost bid to member.

12.5. Subcontractor payment: Contract vendor agrees to pay subcontractors within seven days after receipt of payment from member, as required in Arizona procurement rules and code. If contract vendor receives any interest monies for delay of payment from member, contract vendor will pay subcontractor the correct proportion of interest paid. Complaints by subcontractor may be resolved as described in Arizona procurement rules and code. Failure to pay subcontractor for work faithfully performed and properly invoiced may result in the suspension or cancellation of this contract.

12.6. Use of subcontractors: Labor used to perform work under the contract shall permit the work to be carried on harmoniously and without delay, and that will not cause any disturbance, interference or delay to the progress of the project (e.g. engaging in strike, work stoppage, picketing, ceasing work due to a labor dispute). Subcontractor shall not employ anyone whose employment may be objected to by prime contractor, member or Mohave.

13. TERM OF CONTRACT AND EXTENSION

13.1. Contract period: It is Mohave's intent to award a multi-term contract for the specified materials, equipment and services. The initial contract term shall be for one (1) calendar year from the effective date of contract award. By mutual written agreement between Mohave and contract vendor, the contract may be extended for up to four (4) consecutive additional 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension exists unless and until contract vendor is so notified by Mohave.

13.2. Contract extension: Conditions for contract extension may include, but are not limited to: contract usage, satisfactory performance of services during the preceding contract term, ability to continue to provide satisfactory services, continued adherence to the contract requirements, and continued competitive prices for the materials and services provided under the contract.

13.3. Month-to-month extensions: Mohave reserves the right to offer month-to-month extensions, if that is determined to be in the best interests of members.

14. WARRANTY/QUALITY GUARANTEE

14.1. Fitness: Contract vendor warrants that any equipment or material supplied to Mohave or its members shall fully conform to all requirements of the contract, all representations of contract vendor, and shall be fit for all purposes and uses required by the contract.

14.2. Inspection: The warranties set forth in this section shall not be affected by inspection or testing of, or payment for the equipment or materials to contract vendor by member.

14.3. Quality: Unless otherwise specified, contract vendor warrants that for one (1) year or as specified in **Special Terms and Conditions Item 16.4**, after acceptance of the equipment or materials by member, they shall be:

- Of a quality to pass without objection in the industry or trade normally associated with them;
- Fit for the intended purpose(s) for which they are used;
- Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
- Adequately contained, packaged and marked as the contract may require; and
- Conform to the written promises or affirmations of fact made by contract vendor.

14.4. Warranty requirements: Contract vendor warrants that all equipment, materials, and service delivered under this contract shall conform to the specifications. Unless stated otherwise, all equipment shall carry a minimum 12-month manufacturer's warranty that includes parts and labor. Contract vendor agrees to help member reach resolution in a dispute with the manufacturer over warranty terms. Any extended manufacturer's warranty shall be passed on to member without exception. Mohave reserves the right to cancel the contract if contract vendor charges member for a replacement part that the contract vendor received at no cost under a warranty.

- Equipment, materials and labor shall be warranted at a minimum as follows:
 - Support posts (5"): Lifetime
 - Support post (under 5"): 15 years
 - Hardware: Lifetime
 - Decks, pipe, rungs, rail, hand loops and hand holds: 15 years
 - Plastic parts: 5 years
 - Moving parts: 3 years
 - Safety surfaces: 5 years
 - Labor and install: 1 year
 - All other materials: 1 year

Special Terms and Conditions Acceptance Form

Place after Tab 1d

Signature on Page 55 certifies complete acceptance of the Special Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Special Terms and Conditions:

- ☒ **We take no exceptions/deviations to the Special Terms and Conditions.**

(Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)

- ☐ **We take the following exceptions/deviations to the Special Terms and Conditions. All exceptions/deviations shall be clearly explained. Reference the corresponding Special Terms and Conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the Special Terms and Conditions. Provide details on your exceptions/deviations below:**

(Note: All requested exceptions/deviations must be clearly explained. Reference the specific special terms and conditions that you are taking exceptions/deviations to, detail any proposed substitute special terms and conditions, and clearly demonstrate how Mohave and its membership will be better served by the substituted special terms and conditions. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.)

Place after Tab 1e

1. DESCRIPTION

In order to gain economies of scale, Mohave is formally soliciting statewide sources of playground, fitness and related equipment as specified within this Invitation for Bid. These products/services are requested for Mohave's membership of over 430 public agencies. Contracts, in whole or in part, shall be awarded to bidder, or bidders, for an initial one (1) year term and four (4) consecutive one-year extension options.

The scope of work/services and minimum specifications define the quality and characteristics of the desired materials and application. They are based upon specifications for known acceptable manufacturers, processes, materials and/or brands such as GameTime, Little Tykes, Miracle Recreation Equipment, Landscape Structure, Playworld, and/or equal quality products. Specifications are not intended to be exclusive or to restrict competition. Bidders may offer alternate solutions, including alternate manufacturers, which meet the quality and performance characteristics in the specifications. Mohave shall review such bids and be the final judge on the acceptance of any alternate solutions.

Five contract vendors hold Mohave's current contract for the specified products and services. Activity under the contract from 7/1/13 through 6/30/14 was \$3,049,106.00, and year to date activity (as of the publication date of this IFB) is \$1,124,993.00. This information is provided as an aid to contract vendors in preparing bids only. It is not to be considered a guarantee of volume under an awarded contract. The discount and pricing schedule shall apply regardless of the volume of business under the contract.

Please review Special Terms and Conditions Section 9.5. for details about equipment and services NOT REQUESTED in this IFB.

2. ESTIMATED TIMELINE OF EVENTS

Mohave has developed the following estimated timeline of events related to this formal solicitation. All dates are subject to change as required and at the sole discretion of Mohave.

EVENT	ESTIMATED DATE
Invitation for Bids Issued	October 24, 2014
Pre-bid Conference Held	November 3, 2014 at 10:00 a.m. (local AZ time) Pre-bid conference will be held utilizing WebEx telephone conferencing. Please contact Mohave for reservation details.
Deadline for Questions	November 14, 2014 at 5:00 p.m. (local AZ time)
Published IFB Due Date and Time	November 21, 2014 at 3:00 p.m. (local AZ time) 625 East Beale Street, Kingman, AZ 86401
Public Opening of Bids	November 21, 2014 at 3:00 p.m. (local AZ time)
Notice of Intent to Award <i>(estimated date only)</i>	January 20, 2015
Execution of Contract(s) <i>(estimated date only)</i>	February 20, 2015

3. SUBMISSION OF BIDS

3.1 Bids should provide straightforward, concise information that satisfies the requirements. Expensive bindings, color displays, etc., are not necessary. Emphasis should be placed on conformity to the specifications and terms and conditions, as well as the completeness and clarity of the submittal content.

3.2 The bidder must submit a bid following information detailed in the *IFB Instructions to Bidder and Checklist*.

4. CONTRACT TYPE

The term contract shall be a percent of discount off manufacturer's price list or catalog, fixed price, or a combination of both with indefinite quantities.

5. AWARD CRITERIA

The award criteria for this solicitation are as follows:

Award(s) shall be made to the lowest responsive and responsible bidder(s) whose bid(s) conform in all material respects to the requirements and evaluation criteria below.

Responsive and responsible bidder shall provide the following requirements:

1) Pricing Information: Discount summary, electronic workbook and/or pricing documents, mobilization and travel charges, pricing methodology, bond methodology;

2) Offer and Acceptance, Terms and Conditions, Scope of Work/Services and Specification Documents: Offer and Acceptance, amendments (if any), acceptance of General and Special Terms and Conditions, Standard Terms and Conditions for Construction, Scope of Work/Services, Specifications with exceptions/deviations noted, bid bond/alternate security, bonding capacity;

3) Required Information: Complete response to the Method of Approach and Qualification and Experience pages, references (past performance information), certificate of insurance, company financials;

4) Primary Contract Documents: Completed primary contract documents, support and maintenance information, sample supplemental agreements;

5) Additional Information: Checklist form, descriptive literature and supporting printed data.

References and definitions used for specifications and in the solicitation: (acronyms used in the solicitation are noted in bold font below):

American Concrete Institute (**ASI**): www.concrete.org

American with Disabilities Act (**ADA**): www.ada.gov

American Society for Testing and Materials (**ASTM**): www.astm.org

American National Standards Institute (**ANSI**): www.ansi.org

Consumer Product Safety Commission (**CPSC**): www.cpsc.gov

Forest Stewardship Council (**FSC**): www.fsc.org

International Play Equipment Manufactures Association (**IPEMA**): www.ipema.com

International Organization for Standardization (**ISO**): www.iso.org

US Green Building Council (**LEED**): www.usgbc.org

Specifications

Place after Tab 1e

SPECIFICATIONS

Compliance with specifications: The fact that a manufacturer, supplier or bidder chooses not to produce or supply equipment, supplies and/or services to meet the specifications will not be considered sufficient cause to adjudge the specifications as restrictive. Bidders shall offer equipment, supplies, and/or services they believe come closest to meeting specifications.

Deviations from specifications: Bidders will respond to each numbered specification by checking the appropriate "Comply" or "Deviate" box. "No Bid" items shall be marked as such in the appropriate "Deviate" box. Your exceptions/deviations must be clearly explained. Reference the specification that you are taking exceptions/deviations to, detail any proposed substitute language, and clearly demonstrate how Mohave and its membership will be better served by the language. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final. Details for exceptions/deviations will be listed by specification number on the *Scope of Work/Services and Specifications Acceptance Form*.

Partial bids: Mohave will consider partial bids for award of a contract. Mohave will be the sole judge of products/services offered, and Mohave's decision shall be final.

Purpose of specifications: Specifications are designed to enable bidder to satisfy a requirement for a product, material, process, or service. A specification may be expressed as a standard, part of a standard, or independent of a standard. No specification is intended to limit competition by eliminating items capable of satisfactorily meeting the requirements of the procurement. If bidder believes a specification is unnecessarily restrictive, bidder must indicate such in its bid.

Use of brand names: Brand names, trade names, model numbers, and/or catalog numbers are used to describe the standard of quality, performance, and other characteristics needed to meet member requirements. Use of the name of a manufacturer, brand, make or catalog number is not intended to limit or restrict competition, nor does it restrict bidder from the submission of equivalent brands. However, Mohave reserves the right to decide whether alternatives to the identified manufacturer and brand are equal to the materials and equipment described in the solicitation. Mohave will be the sole judge on the question of equal quality, and Mohave's decision shall be final.

Requirement		Comply	Deviate*
1.1	General Requirements		
1.1.1	Contract vendor shall provide playground, fitness, sports, site furnishings and all other related equipment, materials, parts and replacement parts from manufacturers that are regularly engaged in the manufacture of requested equipment.	X	
1.1.2	Contract vendor shall utilize properly trained, qualified and/or certified personnel to install equipment and materials in strict adherence with manufacturers' instructions; industry standards; and current local, state and national codes.	X	
1.1.3	All products, equipment, materials and safety surfaces shall comply with all the current applicable ADA, ANSI, ASTM, CPSC, FSC, LEED, ISO and IPEMA standards.	X	
1.1.4	Installation of equipment and safety surfaces shall utilize current applicable federal safety standards; if safety standards are in conflict, the more stringent standards shall apply.	X	
1.1.5	Contract vendor shall provide recommendations and designs for equipment that is to be installed to ensure compliance with the ADA.		
1.1.6	Fabric shade structures are only allowed as an integrated component of the installed play structure.	X	
1.1.7	Contract vendor shall evaluate the installation site to ensure suitability. Features to evaluate shall include, but not be limited to: topography, soil conditions, vegetation, climate, prevailing wind, drainage and other factors that may affect installation, use or maintenance of the equipment. The evaluation results shall be provided to the member.	X	

1.1.8	Contract vendor shall determine the location of underground and overhead utilities, telephone, natural gas, cable and water lines. Cost associated with the relocation of these obstacles shall be passed on to the member with no additional markup. All costs shall be detailed in the member's quote. Equipment shall not be built over any underground utilities or beneath power lines.	X	
1.1.9	Contract vendor shall use the volume of concrete that is needed for the equipment, structures, site curbing or flatwork being installed. Concrete curbing and flatwork shall conform to current applicable ACI and ASTM standards.	X	
1.1.10	Contract vendor shall provide member with drawings and equipment layouts prior to installation; all operational and maintenance manuals shall be provided to the member upon completion of installation.	X	
1.1.11	Contract vendor shall provide the member with maintenance kits, hardware kits, individual parts and specific special tools for pinned hex fastener and/or any other special fastener.	X	
1.1.12	Replacement parts provided shall meet original specification and be for the specific structures and/or equipment. Replacement parts shall return structures and/or equipment to original design/configuration.	X	
1.1.13	Contract vendor shall assist member in selecting appropriate materials for play structures, independent play, and site furnishings. Contract vendor shall notify member of potential risks associated with selection (e.g., stainless steel slides may be too hot to use unless covered by shade).	X	
1.1.14	Custom and pre-designed play structures, independent play equipment and outdoor fitness systems shall be designed in a manner to provide for safe use and avoid conflicts in activities.	X	
1.1.15	Play structures, independent play equipment and fitness systems shall be installed over appropriate safety surfaces. Safety surfaces shall be of a depth appropriate for the height and type of activity and/or deck.	X	
1.2	Hardware Requirements		
1.2.1	Primary fasteners shall be socketed and pinned, tamperproof in design, either carbon-steel plated with zinc/nickel and iridescent chromate finish, or stainless steel.		X
1.2.2	Fasteners shall include, but not be limited to: hex head, hex-pin limited thread or TORX head driver bolt.	X	
1.2.3	Hardware is to include a locking patch type material. The material, when allowed an appropriate cure time, shall require a minimum of four times the installation torque to remove the fastener.	X	
1.2.4	Bolt links shall be steel forged with a zinc alloy finish and supplied with a hex-pin limited thread bolt.		X
1.2.5	Clamps shall be cast aluminum alloy and consist of two half square or half circle pieces. Clamps shall fit around support posts, be connected with hinge-pin and bolt or two bolts, and shall be secured to the post with a pin or set screw to prevent slippage. Clamp color shall match post color.	X	
1.3	Play Structure Requirements		
1.3.1	Play structures shall be modular in design and provide for a variety of play and physical fitness activities.	X	
1.3.2	Components for play structures shall include, but not be limited to: bridges, overhead ladders, spiral climbers, play enclosures, loop ladders, tunnels, transfer points, ramps, vertical ladders, chinning bars, activity panels, slides, sliding poles, corkscrew climbers, parallel bars, chain walks, and attached shade.	X	
1.3.3	Decks of various sizes and shapes shall include, but not be limited to: one-piece square decks, one-piece corner decks, two-piece hex decks, one-piece triangular decks, and various extensions for each.	X	

1.3.4	Roof sizes and shapes shall include, but not be limited to: square, peak, or other shaped roofs; constructed of appropriate materials and be available in a variety of colors and patterns	X	
1.4	Play Structure Component Requirements		
1.4.1	Decks shall be of modular design and manufactured from a single piece punched or expanded steel.	X	
1.4.2	Decks shall have angle steel frames and appropriate supports for strength and durability. Deck frames and supports shall be a welded assembly by certified welders.	X	
1.4.3	Decks shall be primer coated after assembly. Decks shall have a finish coat of UV stabilized polyvinyl chloride (PVC) or acceptable alternate material.	X	
1.4.4	Deck coating shall meet or exceed current applicable ASTM standards.	X	
1.4.5	Round and square structural posts shall be constructed of steel or aluminum tubing.	X	
1.4.6	Posts shall have a powder coat finish and top cap.	X	
1.4.7	Top caps shall be metal or plastic, mechanically or permanently fastened, and finished to match post color.	X	
1.4.8	Post lengths shall vary depending upon the intended use and shall extend a safe distance above the deck height.	X	
1.4.9	Posts shall have a "finish grade marker" positioned on the post identifying the bury line required for correct installation and the top of the protective surfacing.	X	
1.4.10	Posts shall have a post number sticker for installation purposes.		X
1.4.11	Buried posts shall be set in concrete footings at the depth specified by the manufacturer installation specifications.	X	
1.4.12	Surface mount posts shall be continuously welded to an appropriate surface mount plate and allow for an appropriate layer of protective surfacing.	X	
1.4.13	If surface mounting is required, a grade surface mount detail shall be supplied. Other types of anchoring for specialty installation shall be available upon request.	X	
1.4.14	Rails and hand loops shall be manufactured from steel tubing, each end of the rail/hand loop shall have a stainless steel knurled welded insert. Rails, loops and hand loops shall have a powder coat finish. Connection to the posts shall use a bolt bracket assembly.		X
1.4.15	Slides shall come in a variety of sizes, styles and configurations.	X	
1.4.16	Slides shall be available in a variety of materials, including, but not be limited to: plastic and stainless steel.	X	
1.4.17	Steps and stairs shall be of materials and construction similar to the decks.	X	
1.4.18	The rise and run for stairs and steps shall be age appropriate and handrails shall be provided.	X	
1.4.19	Riser plates shall be provided between decks with 12" or greater rise. Handholds shall be provided for risers of 18" or greater. Risers shall have powder coat finish.	X	
1.4.20	Transfer points shall allow for transfer from a wheelchair onto a deck. Transfer points shall be of materials and construction similar to the decks.	X	
1.4.21	Climbers shall come in a variety of sizes, shapes and types.	X	
1.4.22	Rail and overhead climbers shall be of welded steel construction with a powder coat finish.	X	
1.4.23	Cargo net climbers construction shall include, but not be limited to: galvanized, PVC free material, carbon fiber covered wire rope or PVC coated chain.	X	
1.4.24	Supports for cargo net climbers shall be powder coated or other steel.	X	

1.4.25	Bridges and ramps shall come in a variety of sizes, shapes and types.	X	
1.4.26	Bridges and ramps shall be of materials and construction similar to the decks.	X	
1.4.27	Ramps and bridges shall have appropriate handrails and hand loops.	X	
1.4.28	Crawl tubes shall come in a variety of sizes, styles and configurations.	X	
1.4.29	Crawl tubes shall be available in a variety of materials including, but not be limited to plastic, polyethylene, or polycarbonate.	X	
1.4.30	Activity panels shall provide for a variety of play activities including, but not be limited to: tic-tac-toe, steering wheel, clock, color ball, and letter/number panel.	X	
1.5	Component and Equipment Manufacture Requirements		
1.5.1	Powder coating shall be electrostatically applied polyester that is baked to a hard, smooth and durable finish.	X	
1.5.2	Powder coating shall meet or exceed current applicable ASTM standards.	X	
1.5.3	Purified fractional-melt high-density polyethylene shall have all waste and adhesives removed prior to molding or extrusion.		X
1.5.4	Multiple-melt flow high or low-density polyethylene shall be purified and contain no oils, waste or adhesives.		X
1.5.5	Use of composites of low-density polyethylene and a secondary fiber (such as sawdust) shall not be permitted, unless independent lab studies document that the resulting product is not vulnerable to moisture deterioration, termite damage or failure at low temperatures. Documentation shall be provided to the member upon request.	X	
1.5.6	Rotationally molded poly parts shall be molded of a low-density polyethylene that is U.V. and color stabilized. Wall thickness may vary depending upon use.	X	
1.5.7	Rotationally molded products shall meet or exceed current applicable ASTM standards.	X	
1.5.8	High-density polyethylene parts shall be manufactured from material that is compression molded, high-density polyethylene that has been specially formulated for optimum U.V. stability and color retention.	X	
1.5.9	Compression molded products shall meet or exceed density of .933 G/cc and tensile strength of 3,900 psi.	X	
1.5.10	High-density polyethylene parts shall meet or exceed applicable ASTM standards.	X	
1.5.11	Metal components shall be free of excess weld and spatter. Parts shall be thoroughly cleaned in a pretreatment with a hot phosphate bath with a non-chrome seal for corrosion resistance, and thoroughly dried.		
1.5.12	All equipment and material color shall be fade resistant.	X	
1.6	Independent Play Equipment Requirements		
1.6.1	Independent play equipment shall include, but not be limited to: spring riders, diggers, activity panels, climbers, swings, electronic products or slides.	X	
1.6.2	Spring riders shall use C - type springs, torsion-powered springs or coil springs.	X	
1.6.3	Electronic products shall be powered using low-voltage power, battery or self-powered. Products shall be vandal and weather resistant.	X	
1.7	Fitness and Sports Equipment Requirements		
1.7.1	Outdoor fitness systems shall include, but not be limited to: chinning bar, sit-up bench, climbing wall, overhead climber, leg stretch, push-up bar, parallel bars, balance beam, and vertical ladder.	X	
1.7.2	Fitness systems shall be independent equipment or multi-station with signs that assist with proper use.	X	

1.7.3	Fitness systems offered to the member shall be for the appropriate target age group.	X	
1.7.4	Outdoors sport equipment shall have permanently anchored bases and be limited to: basketball, volleyball, tetherball, baseball backstops, football goals or foul ball posts. Contract vendor shall provide the ancillary equipment and replacement parts for installed equipment to provide for a complete system.	X	
1.8	Additional Equipment and Accessories		
1.8.1	Signs shall attach to the play structures or freestanding equipment as recommended by manufacturer.	X	
1.8.2	Sign material shall include, but not be limited to: solid, colorfast, U.V. stabilized high-density polyethylene or fiberglass-reinforced plastic.	X	
1.8.3	Freestanding signs shall be mounted on powder coated posts.	X	
1.8.4	Site furnishing shall include, but not be limited to: benches, picnic tables, litter receptacles, cooking grills, water fountains or bicycle racks.	X	
1.8.5	Water fountains shall include, but not be limited to: multiple use drinking fountains, misters, shower towers, and foot sprayers	X	
1.8.6	Site furnishings with wood components shall use treated pine and or redwood. Other lumber products that provide similar protection against weathering, rot and insects shall be considered.	X	
1.8.7	Pre-engineered and pre-fabricated shelters shall include, but not be limited to: pavilions, shelters, gazebos or ramadas.	X	
1.8.8	Site furnishings, shelters, and pavilions shall be installed with appropriate safe play and encroachment zones when placed in the same area as playground equipment.	X	
1.8.9	Bleachers shall not exceed 5 rows or 90 seats and shall be portable.	X	
1.9	Retainer edging materials and safety surfaces		
1.9.1	Permanent edging materials shall include, but not be limited to: plastic, wood, timber or concrete.	X	
1.9.2	Edging materials shall be easily installed, and shall not require regular maintenance. Edging shall be free of sharp edges.	X	
1.9.3	Edging materials shall be able to be installed above or below grade level, and on various types of surfaces. Edging shall include a transition to permit change from a solid safety surface to a loose fill safety surface and be designed with a beveled edge to provide for wheelchair transition onto a solid surface.	X	
1.9.4	Safety surfaces shall include, but not be limited to: loose-fill rubber mulch, engineered wood fiber, poured in place playground surface, sand, resilient rubber tile, or other materials designed for use as playground safety surfaces.	X	
1.9.5	Safety surfaces shall be installed at the proper depths specified in the CPSC standards for impact absorption.	X	
1.9.6	Wood fiber safety surfaces shall meet the current ASTM standards for safety, purity, provide for proper drainage and not deteriorate over time.	X	
1.9.7	Safety surfaces must conform to current applicable ADA standards and allow for wheelchair access.	X	

***Exceptions/deviations must be listed on the *Scope of Work/Services and Specifications Acceptance Form*. List the specification number for each exception/deviation.**

Scope of Work/Services and Specifications Acceptance Form

Place after Tab 1e

Signature on page 55 certifies complete acceptance of the Scope of Work/Services and Specifications in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Scope of Work/Services and Specifications:

- ☐ **We take no exceptions/deviations to the Scope of Work/Services and Specifications.**

(Note: If nothing is listed below, it is understood that no exceptions/deviations are taken.)

- ☒ **We take the following exceptions/deviations to the Scope of Work/Services and Specifications. All exceptions/deviations shall be clearly explained. Reference the corresponding Scope of Work/Services or Specifications that you are taking exceptions/deviations to. Provide details on your exceptions/deviations below:**

(Note: All requested exceptions/deviations must be clearly explained. Reference the specific language that you are taking exceptions/deviations to, detail any proposed substitute language, and clearly demonstrate how Mohave and its membership will be better served by the substituted language. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.)

1.2.1 - We do not use pinned hardware

1.2.4 - We do not use pinned hardware

1.4.10 - Post number indicators are on packaging for post, not on the post

1.4.14- Open ended rail ends get a polyethylene insert, not stainless steel

1.5.3 - Does not apply; This specification is for post consumer contamination; Miracle uses new materials that do not have waste or oils from being recycled, so there is no need for purification and removal of adhesives, waste, etc

1.5.4 - Does not apply; This specification is for post consumer contamination; Miracle uses new materials that do not have waste or oils from being recycled, so there is no need for purification and removal of adhesives, waste, etc

RLI INSURANCE COMPANY

November 13, 2014

Mohave Educational Services Cooperative, Inc.
Contract Department
62 5 East Beale Street
Kingman, AZ 86401

Re: Miracle Recreation Equipment Co.

To Whom It May Concern:

It has been the privilege of Aon Risk Services Central, Inc. and RLI Insurance Company to provide surety bonds on behalf of Miracle Recreation Equipment Co. In our opinion, Miracle Recreation Equipment Co. remains properly financed, well equipped and capably managed.

At the present time, RLI Insurance Company provides a \$2,000,000 aggregate surety program to Miracle Recreation Equipment Co. At this time, the available amount of bonding capacity for Miracle Recreation Equipment Co. is in excess of \$350,000. As always, RLI Insurance Company reserves the right to perform normal underwriting at the time of any bond requests, including, without limitation prior review and approval of relevant contract documents, bond forms, and project financing.

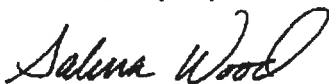
RLI Insurance Company is listed on the U.S. Treasury Department's Listing of Approved Sureties (Department Circular 570) and is rated A+ XI by A.M. Best Company.

This letter is not an assumption of liability, nor is it a bid or performance and payment bond. It is issued only as a bonding reference requested by our client.

Signed, Sealed and Dated 13th Day of November, 2014.

Very truly yours,

RLI Insurance Company



By: _____
Salena Wood, Attorney-In-Fact

Bid Bond

Place after Tab 1f

KNOW ALL MEN BY THESE PRESENTS:

THAT, MIRACLE RECREATION EQUIPMENT CO.

(hereinafter called Principal), as Principal, and RLI INSURANCE COMPANY

a corporation organized and existing under the laws of the State of Illinois, with its principal office in the city of Peoria, IL, (hereinafter called the

Surety), as Surety, are held and firmly bound unto Mohave Educational Services Cooperative, Inc. in the State of Arizona, (hereinafter called the Obligor) in the amount of \$100,000 for payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Playground, Fitness and Related Equipment

NOW, THEREFORE, if the Obligor shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligor in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the Obligor the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligor may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

The prevailing party in a suit on this bond shall recover as part of his judgment such reasonable attorney fees as may be fixed by a judge of the court.

Witness our hands this 13th day of November, 2014.

MIRACLE RECREATION EQUIPMENT CO.

PRINCIPAL

SEAL

BY

RLI INSURANCE COMPANY

SURETY

SEAL

BY Salena Wood, Attorney-In-Fact

Aon Risk Services Central, Inc.

AGENCY OF RECORD

ACKNOWLEDGEMENT BY SURETY

STATE OF MISSOURI
COUNTY OF ST. CHARLES

On this 13th day of November 2014, before me, Jeannette Davis, a Notary Public, within and for said County and State, personally appeared Salena Wood to me personally known to be the Attorney-in-Fact of and for RLI Insurance Company and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Missouri
County of St. Charles





RLI Surety
P.O. Box 3967 | Peoria, IL 61612-3967
Phone: (800)645-2402 | Fax: (309)689-2036
www.rlicorp.com

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Robert E. Duncan, Sandra M. Winsted, Melissa L. Fortier, Judith A. Lucky-Eftimov, Susan A. Welsh, Karen L. Daniel, Linda M.

Napolillo, Marcia K. Cesafsky, Sandra M. Nowak, Christopher P. Troha, David J. Roth, Michelle D. Krebs, Salena Wood, Jeannette M.

Davis, Ann Mullins, Triniy R. Garcia, Derek J. Elston, jointly or severally

in the City of Chicago, State of Illinois its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

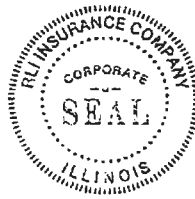
Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 11th day of April, 2014.



RLI Insurance Company

By: Roy C. Die Vice President

State of Illinois }
County of Peoria } SS

CERTIFICATE

On this 11th day of April, 2014, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 13th day of November, 2014.

By: Jacqueline M. Bockler Notary Public



RLI Insurance Company

By: Roy C. Die Vice President

1230371020212

A0058707

Supplemental Information – Method of Approach

Place after Tab 2a

Bidder shall respond to each item below. The information will be used to assist Mohave in evaluating the method of approach that a bidder would take regarding specific issues under an awarded contract. Do not use "boilerplate" answers for the questions. Respond to each item by specifically addressing the Mohave request. Failure to complete all questions may result in your bid being considered nonresponsive.

1. Prepare an Executive Summary that provides a short narrative description of what you are offering for this contract.
2. Bidder shall provide a project plan that describes how the bidder intends to implement the plan to Mohave and its members. This information will include, but not be limited to:
 - Account team structure and role which includes, but is not limited to description of sales contact process, account team support, and periodic account review processes;
 - Communication process with Mohave and its members;
 - Delivery time to members; and
 - Any other value-added services that may benefit members.
3. Indicate how you will ensure your sales staff does not sell products or services that are not on contract or will not meet the public need.

**SEE ATTACHED EXECUTIVE SUMMARY AND
METHOD OF APPROACH**

Indicate if your bid is regional or statewide: Regional _____ Statewide X

If regional, indicate the regions in Arizona you will serve.

Are there any limitations to the types of members that you will provide services to? If so, indicate what those limitations are.

no services are provided to residential customers

In the past three years, what percentage of your Arizona business do you estimate was in each geographical area identified below?

Maricopa/Pinal/Pima counties 70 %

Northern Arizona 10 %

Southern Arizona 20 %

If you are awarded a contract with Mohave, which area(s) of the state will your sales force target?

By the nature of responding to customer needs, we anticipate the

majority of our business will be in Maricopa County however we will

implement marketing strategies that specifically target areas outside

of this region, including small and rural areas, where Mohave

cooperative services have a high value

If a Mohave member in a geographic area of Arizona that is remote from your general service area needs your services, please describe how you would use local subcontractors to accomplish the work. What is the maximum amount of work you would subcontract to complete a job?

Since the playground industry is highly regulated work, Miracle/Micon would diligently try to accommodate the remote customers. In the unlikely event that we could not

satisfy the timing for a particular client, we would only sub contract with an equally

qualified and credentialed sub-contractor. The Miracle/Micon Joint Venture is licensed

as a General Contrator along with a "D" specialty endorsements. Only a General

Contractor can sub contract per AZROC requirement.

Supplemental Information – Qualifications and Experience

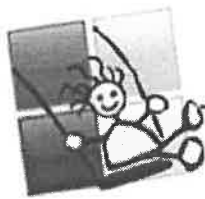
Place after Tab 2a (except as noted below)

Bidder shall respond to each item below. The information will be used to assist Mohave in evaluating the qualifications and experience of the bidder. Do not use "boilerplate" answers for the questions. Respond to each item by specifically addressing the Mohave request. Failure to complete all questions may result in your bid being considered nonresponsive.

1. Write a *brief* history of your company that includes length of time in business and your firm's philosophy of doing business. If bidder has recently purchased an established business or has proof of prior success in this business or a closely related business, please provide written verification.
2. Provide the address for your company's headquarters. Provide addresses for any branch offices in Arizona. Indicate how long your company has provided the services/products you are proposing. Provide names, titles, qualifications and experience of the key people who will support this contract.
3. Provide a current letter from your financial institution indicating the range of credit available to your firm, (e.g., "credit in the low nine figures" or "credit line exceeding five figures"). Provide a current letter from your financial institution and/or officers of major suppliers, indicating confidence in your firm's stability and payment history. *These letters will only be used to evaluate bids and will not be made available to the public.*

Bidders may submit current audited annual financial reports in lieu of letters from financial institutions. However, the annual financial reports must provide essentially the same information as requested from the letters. Bidders are encouraged to highlight the requested information in any audited annual financial report submitted in response to this solicitation. All financial information will be kept confidential. **Place after Tab 2c.**

4. Indicate if any of the products you are offering received any awards or nominations for excellence. Indicate if the products offered in the bid meet applicable industry standards. List applicable awards and/or standards.
5. Indicate if your firm would qualify as a minority owned business. To qualify for ownership as a minority owned business, at least 51% of the firm's ownership must be held by a person, or persons, of a particular group (e.g., Woman owned, Hispanic owned, Native American owned, etc.). Proof of ownership is evidenced by the transaction privilege tax license or business privilege license for sole proprietorship; business privilege license **and** written partnership agreement for partnerships; or the Articles of Incorporation, Corporate By-laws **and** stock certificates for corporations. *NOTE: This information is used for reporting purposes only and is not a factor in evaluation.*
6. Include information regarding your authorization to submit a bid for the specified equipment/services and that you can provide the equipment/services if awarded a contract. Indicate if you are a bona fide dealer for the equipment/services in the bid or if you are a manufacturer of the equipment/services in the bid.
7. Provide a letter of reference from three (3) different Arizona public agencies where work has been successfully accomplished/products and have been sold in the past five (5) years, for specific goods/services related to this solicitation. If you cannot provide three (3) Arizona public agency letters of reference, provide other public agency references. Include the reference letters in your response. Reference letters sent directly to Mohave on your behalf cannot be accepted. The letters of reference should provide the following information:
 - Organization's name and location
 - Organization's representative and contact information (phone and email address)
 - A brief description of the work, when and where the work was performed
 - Any specific issues that may be pertinent regarding the work performed
 - Letters shall be properly dated, signed and on organization's letterhead



Miracle Playground Sales

SUPPLEMENTAL INFORMATION - EXECUTIVE SUMMARY AND METHOD OF APPROACH

Miracle, in cooperation with Micon Construction, is offering a full turnkey solution to park and playground planning to Mohave members. As a manufacturer, Miracle Recreation has been in existence since 1927 and continues to be a leader in the playground industry. As a local representative, Miracle Playgrounds has been serving Arizona customers for close to 16 years and has patterned with Micon Construction as our certified Miracle installer to provide and install hundreds of park and playground products throughout the state.

By offering products ranging from playgrounds and playground surfacing to site furnishings such as shelters and ramadas as well as tables and benches, we can meet the needs of both schools and municipalities looking for planning and construction of new or existing facilities.

Our account team is made up of the following individuals organized to service our customers efficiently and properly:

Monte Corley - Account Manager, Miracle Playgrounds

- Responsibilities are initial project development and customer contact to include planning meetings with customers to discuss project, site review, design, assistance in product selection and related pricing, coordination of Mohave proposals to customer and general product related and process related questions

Debbie Back - Account Management Assistant, Miracle Playgrounds

- Responsibilities are generating quotes and proposals at the request of Mohave members specific to the contract, coordination of ordering product with member and installer and scheduling with customer and installer

Kim Garrigues - Construction Project Manager, Micon Construction

- Responsibilities are coordinating with Miracle the delivery of equipment and install of equipment when services are requested by Mohave member

Steve Wisecarver - Construction Superintendent, Micon Construction

- Responsibilities are site supervision and coordination of install with Miracle and with Mohave member to ensure that all site conditions are reviewed and considered for a

Miracle Playground Sales
9106 Pulsar Court #C • Corona, CA 92883
(800) 264-7225 Toll Free Phone • (800) 905-1411 Toll Free Phone
(877) 215-3869 Toll Free Fax
Sales@miracleplayground.com • www.miracleplayground.com

successful install as well as any outstanding issues remaining on completion of the job are resolved for the member

Mitch Holle - Construction General Manager, Micon Construction

- Responsibilities are general management of Micon Construction services

Kevin Walker - Manufacturer Representative/Contract Manager Miracle Recreation

- Responsibilities are sales support from the factory direct to the contract team as needed

While most projects done under contracts of this type are all different, the typical process that will be implemented by our contract team is as follows:

- Initial contact with customer made (may be either reactive or proactive contact)
- Meet with customer to discuss needs, review site, gather specific information on what the customer is looking for and discuss plan to put together design and/or proposal to meet customer's needs (typical 1 to 3 days from initial contact)
- Create design and/or proposal (typical 1 to 2 weeks)
- Present proposal and discuss specifics with customer to make sure we have clearly provided what has been asked for
- Customer review of proposal; potential changes made at this stage (timeframe varies depending on customer's timeline and potential revisions desired)
- Once member decides to proceed, purchase orders are issued to Mohave by member and then to Miracle for ordering/scheduling (estimate 2 to 3 days)
- If installation is involved, a pre-construction meeting is scheduled prior to equipment arriving on site; installer coordinates delivery and offloading of equipment
- Product is ordered, lead times vary by product:
 - Playgrounds - 4 to 5 weeks
 - Site furnishings - 4 to 5 weeks
 - Fitness Equipment - 4 to 5 weeks
 - Surfacing - 2 to 3 weeks
 - Shelters and Ramadas - 8 to 10 weeks
- Member is notified of expected deliveries as we receive confirmation from manufacturers
- Product is received by member or installer
- If installation is involved, product is installed and timeframe is dependent on nature of product design/type/size (typically 1 to 2 weeks)
- After product is installed or received by customer, with member approval a post-installation walk through is scheduled to review final product and address any outstanding issues

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As a value added service to all Mohave members, Miracle offers a *Playground Needs Assessment* at no charge. Miracle's account manager will meet with customer to review existing facilities and provide a documented summary of the condition of play equipment and a potential plan of action for the member to use as a forward planning tool.

Because of the structure of our contract team and the initial single contact source, we can ensure that no products are offered and sold that are not part of the Mohave contract. Additionally, we would have no circumstance in which we would offer any products that are not specifically requested by our customers.

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Sales@miracleplayground.com • www.miracleplayground.com

SUPPLEMENTAL INFORMATION - QUALIFICATIONS AND EXPERIENCE

Miracle Recreation has been in business since 1927 as a playground manufacturer and provides products to customers of varying types all over the world. As a local representative, Miracle Playgrounds has been in business since 1996 and acquired the Arizona territory in 2000.

We believe in making a positive difference in the experience our customers have during the entire process of planning and purchasing park and playground products. Being responsive to their needs at all stages while offering the best products and standing behind them has been key to our success.

Miracle's company headquarters are located at:

Miracle Recreation Equipment Company
878 E. Highway 60
Monett, MO 65708

Miracle's local agency for Arizona has its headquarters located at:

Miracle Playgrounds
9106 Pulsar Ct. Unit C
Corona, CA 92883
Monte Corley - full time Arizona resident

Miracle's local certified installer, Micon Construction, is located at:

Micon Construction of Arizona
19420 Kennedy Dr.
Mayer, AZ 86333

The following pages include from our financial institution and reference letters from customers.

Miracle Playground Sales
9106 Pulsar Court #C • Corona, CA 92883
(800) 264-7225 Toll Free Phone • (800) 905-1411 Toll Free Phone
(877) 215-3869 Toll Free Fax
Sales@miracleplayground.com • www.miracleplayground.com

MIRACLE RECREATION EQUIPMENT
COMPANY
878 E HIGHWAY 60
MONETT, MISSOURI 65708 USA
TOLL FREE: 1-800-523-4202
PHONE: 417-235-6917 • FAX: 417-235-6816
WWW.MIRACLE-RECREATION.COM



89 of 361
COMMERCIAL PLAYGROUNDS •
FITNESS CLUSTERS
ROPE CLIMBERS • BOULDER CLIMBERS
CLIMBERS, SPRING RIDERS & WHIRLS
PICNIC TABLES, BENCHES & GRILLS • SLIDES &
SWINGS
BASKETBALL GOALS, BACKSTOPS & SOCCER
GOALS
BLEACHERS & PLAYER BENCHES
POOL SLIDES

November 17th, 2014

To Whom It May Concern:

Miracle Playground Sales Southwest is the sole source provider of Miracle Recreation Equipment Company playground equipment, pool slides and sight amenities in the States of Nevada and Arizona.

As the sole source provider, Miracle Playground Sales is also the sole source provider of Miracle Recreation Equipment Company replacement parts. Miracle Recreation Equipment Company recommends using only Miracle Recreation replacement parts when servicing your equipment. Use of non-Miracle Recreation parts while servicing your equipment will result in the voiding of the remaining warranty on the equipment.

I would like to take this opportunity to thank you for your patronage. We know you have choices when it comes to your park and playground needs and we are happy you have chosen Miracle Recreation as your provider.

Sincerely,

Kevin Walker
Sales Administration and Customer Service Manager
Miracle Recreation Equipment Company

**City of Peoria****COMMUNITY SERVICES
DEPARTMENT**

9875 North 85th Avenue
Peoria, Arizona 85345
T 623.773.7137
F 623.773.7180

Memorandum

Date: November 13, 2014

To: Mojave Contract Officer

From: John R. Sefton, Jr. CPRP, Director

Re: Miracle Playgrounds

This memo is to serve as City of Peoria support for Miracle Playground's eligibility for the Mojave Contract series.

Miracle Playgrounds has successfully served the city to install numerous play and park features and associated construction services. These include project elements at Pioneer Park (2013), Scotland Yard Park (2012), Peoria Community Center (2012), and WestWing Park (2009).

The availability of Miracle's products and services via the Mojave contract benefits the city and our ultimate goal of providing a diverse mix of quality play and park experiences for our citizens.

I can be reached at 623-773-7135 or by email at john.sefton@peoriaaz.gov should you need further detail on our experience with Miracle Playgrounds.

Cordially,

A handwritten signature in black ink, reading "John R. Sefton Jr." with a stylized flourish at the end.

John R. Sefton, Jr., CPRP
Director



15960 West Bullard Avenue Surprise, Arizona 85374-9002
(623) 222.2000 fax (623) 222.2002
www.surpriseaz.com

To whom it may concern,

As the Parks Manager for the City of Surprise, Az, I am very familiar with Miracle Playground and Micon Construction. Miracle has completed several projects with us dating back since I became manager in 2007. This includes playground units, ADA systems, exercise trail components and safety flooring.

Monte Corley has been a key component in our relationship with Miracle along with great products and service. We have not invested in any additional units for the past few years as I am sure most cities have not. We are renovating our largest playground located in our community park. We are in the procurement process to have Miracle renovate our ADA section of that large playground.

It is helpful to us to be able to utilize the Mohave contracts with our vendors and we hope we can utilize that contract with Miracle in the future.

Thank you for the time and I hope you take Miracle Playground into consideration for renewal.

Sincerely,

Joey Brazil, City of Surprise Parks Manager



PIMA COUNTY
NATURAL RESOURCES
PARKS & RECREATION

Chris Cawein, Director

3500 West River Road
Tucson, AZ 85741
520.877.6000
fax 520.877.6006
www.pima.gov/nrpr

November 13, 2014

Miracle Playgrounds
c/o Monte Corley
1146 N. Mesa 102, # 136
Mesa, AZ 85201

To Whom it may Concern:

On behalf of Pima County Natural Resources, Parks & Recreation (NRPR) Department, I would like to indicate how we have worked with Miracle Playgrounds over the last 25 years. We have purchased and installed by competitive bid processes numerous playgrounds manufactured by Miracle Playgrounds during this timeframe. We have relied on the representatives of Miracle Playgrounds to provide our department with their maintenance recommendations for these playgrounds and they have provided us information when requested on compliance questions regarding the ASTM standards and CPSC guidelines as it pertains to their playground equipment installed in our parks. We have also made numerous purchases during this timeframe to replace worn or vandalized components of our Miracle Playgrounds. Monte Corley and other Miracle Playgrounds representatives regularly come to Tucson and meet with myself and my staff to assist us with ordering replacement components for our playgrounds, they provide us information on new products and equipment, and they offer us technical expertise on the maintenance and repairs of our Miracle playground equipment. Miracle Playgrounds also have provided us with installation instructions for all replacement components when ordered.

Our department recently met with Monte Corley at our Flowing Wells District Park (August 21, 2014) to help us order replacement components for worn and vandalized parts on two of our modular playgrounds at the park. We ordered two replacement slides, a wall enclosure and a crawl tube. One of the components that needed to be replaced is no longer manufactured so Monte assisted us with ordering a replacement part that would fit and replace this piece. NRPR has a master agreement with Miracle Playgrounds so we can easily issue purchase orders when we need to replace components for our Miracle Playgrounds.

Please let me know if you have any questions.

Sincerely,

George Kuck
Operations Maintenance Manager
George.Kuck@pima.gov
520-724-5179



City of Phoenix
PARKS AND RECREATION DEPARTMENT

Joe Diaz

Landscape Architect II

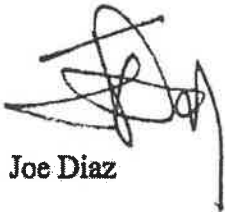
Email: joe.diaz@phoenix.gov

Description of Work:

Miracle Playgrounds have been the main provider of playground equipment for over the last 10 years. We currently have over 250 play structures in the City of Phoenix and over 90% of those structures are Miracle Playground products.

Our most recent projects (within the last 6 months) with Miracle are Coronado Park playground, Cielito Park playground, and Encanto Park playground. All of the projects were install without a hitch and The City of Phoenix has had no problems with the new equipment. The equipment has proven to be durable and structurally sound in the past and The City of Phoenix has no reason to think the new equipment will be anything else.

If you need any further information, please contact me at 602-534-2161.



Joe Diaz

Place after Tab 3b

Mobilization and Travel Description

If mobilization and/or travel rates are applicable, describe how they are calculated, and when they are necessary, (e.g. 50 miles from origin, etc.). Include information regarding what the mobilization and travel rates cover. (See **Pricing: Reimbursement for Transportation, Mileage, Lodging, Meals and Incidental Expenses** in the Special Terms and Conditions.)

SEE ATTACHED "BID SERVICES CLARIFICATIONS / EXCLUSIONS"

Pricing Methodology Description

- ☐ Our pricing methodology is percent of discount off manufacturer's price list or catalog.
- ☒ Our pricing methodology is fixed pricing.
- ☐ Our pricing methodology is a combination of percent of discount off manufacturer's price list or catalog and fixed pricing.

Provide a description as to how your pricing will be managed under an awarded contract. If you are using fixed pricing, outline any contingencies for economic adjustments. (See **Basis for Pricing** in the Special Terms and Conditions.)

It is our opinion that a fixed pricing model is the clearest method for customers to

follow. Additionally, because many of our manufacturers have different pricing structures,

setting up all our product offerings as a fixed price will be a consistent method to present

to members. We anticipate a one-time annual adjustment at the beginning of each year not

to exceed a 5% increase in each product line we offer.

Volume Discount Description

Provide a description as to how your volume discounts (if offered) will be managed under an awarded contract.

Within our playground product offerings, any project over \$20,000.00 in product will

receive free shipping.

General Building Contractors
License #744198 CA #154926 AZ #0054869 NV
1616 Sierra Madre Circle, Placentia, CA 92870 Ph: (800) 949-0203 Fx: (714) 666-1007

Mohave Bid 14X-121 (2014)

BID SERVICES CLARIFICATIONS / EXCLUSIONS

General (Applies to all services offered)

Subsistence per person for areas outside of Maricopa, Yavapai Counties:

Mileage - \$0.34 per mile, per person, both ways.

Meals - \$29.50, per person, per day.

Lodging – based on \$110/night, 2 persons per room

Unusual soil conditions are not included in the above listed prices. Caliche and rock are some conditions that the member may encounter which could increase cost. For bidding purposes, Micon considers normal soils to be materials that can be excavated with skid steer type hydraulic augers (95% of projects). Members are encouraged to ascertain soil conditions by consulting with field staff prior to ordering. Micon cost upgrades with excavation techniques can be minimal if known in advance (i.e. backhoe vs. skid steer). Footing prices include excavation by industry standard; "skid steer" style augers, are excluded.

Minimum installation costs are noted for each specific product. **Projects over \$2,500.00 of combined costs are exempt from individual item minimums.**

Poligon

Footing sizes are based on minimum wind load calculations (18 pounds x SF of roof). Job specific footings must be quoted after receipt of approved engineering drawings. Prices for roofing and framing include offloading of materials IF delivery and installation is coordinated and site is ready by customer. Paint is not included, but can be priced on request (P.O.R.)

Site to be subgrade ready and clear of interfering utilities, hardscape and softscape.
Site to be "tailgate" accessible for deliveries of shelter, concrete and other materials.
Project bid for all work as concurrent.

Minimum Installation = \$ 1,850.00

Miracle

Minimum Installation = \$ 1,350.00



General Building Contractors

License #744198 CA #154926 AZ #0054869 NV

1616 Sierra Madre Circle, Placentia, CA 92870 Ph: (800) 949-0203 Fx: (714) 666-1007

Fibar Systems

Drainage under engineered wood fiber is not included in this bid. Sump drains or storm drain connections can be used depending on the native ground percolation rates and proximity to the nearest drain. Micon can provide options to the customers requesting sub drainage for their play areas. Price for installation is based on "tailgate" access to work area for delivery trucks.

Minimum Installation = \$ 715.00

Greenfield

Minimum Installation = \$1,350.00

SiteScapes

Minimum Installation = \$ 500.00



Place after Tab 3c

Bond Methodology Description

Provide detailed information explaining the methodology to be used when bonds are applied to projects. Describe in detail the method your surety company requires you use (e.g., bonds are applied before sales tax is applied, bonds are applied after sales tax is applied, etc.) Mohave will use this information to verify that your firm is consistently charging bonds in the same manner under an awarded contract.

Bonds are applied to the total dollar amount of the proposal including tax.

Bonds are provided at \$20 per \$1000.

The bonding capacity of Miracle is \$250,000 single limit and \$2,000,000 aggregate.

Evaluation Requirements – Primary Contract Documents

Place after Tab 4a

1. Provide Arizona Transaction Privilege (sales) Tax License Number: 03 007877-g

Do you collect city, county and/or other local sales tax in Arizona? Yes X No

If yes, please check one:

☐ Our combined state, city, county and/or other local sales tax rate is % (local rate).

☒ The sales tax rate varies by the location (e.g. ship-to-rate).

2. Mohave is established to offer a cooperative purchasing program "*which can be accomplished more efficiently and economically as a multi-district or multi-county operation.*"

Efficiency and economy can be established through reduced bidding effort for members and vendors, management of a single contract, fewer price schedules to maintain, fewer contact persons, using Mohave as an extension of members' purchasing departments. Additionally, it is Mohave's assertion that a statewide contract available to over 430 public agencies results in economies of scale and lower prices than those received by bidding individual contracts, especially, but not limited to small member agencies.

Will a contract based upon your bid result in the efficiencies and economies described above?

Yes X No

If no, what efficiencies and economies would members receive from a contract based on your bid?

3. List applicable Arizona Contractor's licenses held by your company.

Name of licensee	Classification	Number
MICON CONSTRUCTION	Specialty Type D: CR-5,	#154926
	Playground Equipment	
	General Type C: A-General	#19506

Engineering

4. Contact information for purchase orders:

Physical Address 9106 Pulsar Ct. Unit C, Corona, CA 92883

Email Address debbie@miracleplayground.com

Fax 1-877-905-1411

Attention of Debbie Back

5. Sales support by region:

Name	Region served	Phone
Monte Corley	All Regions	800-905-1411 x105

6. Will you offer members a quick pay discount if payment is made within 10 or 20 days?

Yes x No If Yes, what is the discount for 10 days? 2% 20 days?

7. What is your general website (Internet) address? www.miracleplayground.com

8. Contacts for Mohave:

Main Mohave representative contact: Monte Corley*(Shall be the main point of contact for members and be responsible for member information requests.)*Title Managing Partner Email address monte@miracleplayground.comPhone number 800-905-1411 x105 Fax 877-905-1411**Contract Administrator contact:** Debbie Back*(Shall be the main point of contact for Mohave Procurement/Contract Specialists. Shall be responsible for handling information requests from the Mohave specialists.)*Title Sales and Management Assistant Email address debbie@miracleplayground.comPhone number 800-905-1411 x101 Fax 877-905-1411**Accounting contact:** Allison Burgner*(Shall be the main point of contact for Mohave Accounting Manager.)*Title Accounting Manager Email address allison@miracleplayground.comPhone number 800-905-1411 x116 Fax 877-905-1411**Open Order Report/Status Report contact:** Debbie Back*(Shall be the main point of contact regarding open orders.)*Title Sales and Management Assistant Email address debbie@miracleplayground.comPhone number 800-905-1411 x101 Fax 877-905-1411**Audit contact:** Allison Burgner*(Shall be the main point of contact for Mohave Audit Specialists.)*Title Accounting Manager Email address allison@miracleplayground.comPhone number 800-905-1411 x116 Fax 877-905-1411**Reconciliation contact:** Allison Burgner*(Shall be the main point of contact for the reconciliation report.)*Title Accounting Manager Email address allison@miracleplayground.comPhone number 800-905-1411 x116 Fax 877-905-1411**Escalation contact:** Jim Spence*(Shall be the main point of contact when an issue needs to be escalated above the main contact for the Bid/contract. This contact shall be a different individual than those named for the contacts listed above.)*Title General Manager Email address jim.spence@miracleplayground.comPhone number 800-905-1411 x107 Fax 877-905-14119. **Payment remittance address** 9106 Pulsar Ct. Unit CAttn: Allison BurgnerCity Corona State CA ZIP 92883Telephone (invoice questions) 800-905-1411 x116 FAX 877-905-1411

Place after Tab 4a

Provide the requested customer support information for warranty and maintenance service offered by your firm, as applicable.

☒ **Yes**, the following is applicable to our offer. (If yes, please provide the information below.)

☐ **No**, the following is not applicable to our offer.

Do you provide warranty and maintenance for the items in the bid? ☒ Yes ☐ No

If not, how do members obtain warranty and maintenance service?

Provide the name and address of the facility that will provide warranty and maintenance service, under an awarded contract. Additionally, provide a contact person and phone number for warranty and maintenance service. If there is more than one facility, provide the names and addresses for all facilities. Attach a list if necessary.

Warranty services or maintenance is provided on site where product is located. Parts that are covered under warranty are sent to customer directly at no charge. Labor is not included as part of warranty coverage unless it is specifically related to installation issues.

Do you provide technical assistance via phone? ☒ Yes ☐ No If yes, provide a phone number and contact.

1-800-905-1411 x105 or x 101 (Miracle) 602-363-4983 (Micon Construction)

How many technicians are located at each warranty/service facility that would serve a Mohave contract? (2) representatives available at the above 800 number (1) available at 602 number

What is the value of parts inventory normally on hand at each warranty/service facility that would serve a Mohave contract?

warranty parts are shipped direct from factories, location and value varies with manufacturer

What is your service response time for metropolitan areas (e.g., Phoenix, Tucson) and rural areas? return calls within 24 hours, parts delivered between 1 to 4 weeks depending on part

Describe the steps a member should take to activate a warranty, if any. (1) contact main Mohave account rep, (2) provide information to rep on parts needed or arrange site visit (3) once parts are identified, Miracle processes warranty order and arranges delivery with customer

Do you offer extended warranty or maintenance service plans? ☐ Yes ☒ No

If yes, provide a summary of the plans here and/or copies of the plans after this page. Include pricing for extended warranty or maintenance service plans in your price schedule. (Tab 3a.) Place any supplemental end-user agreements forms, which include terms and conditions and/or member signature after **Tab 4b**.

JOINT VENTURE AGREEMENT

November 11, 2014

Mohave Education Services Cooperative
Attn: Mike Nentwig, Contracts Specialist
625 East Beale St
Kingman, AZ 86401

Re: Joint Venture Agreement
Mohave IFB 14X-1121, Playground, Fitness and
Related Equipment

This is to serve as a formal Joint Venture agreement between Miracle Recreation Equipment Company and Micon Construction for the above-mentioned project.
All installation work required by Mohave Members when utilizing this contract shall be provided by Micon Construction, AZROC # 154926.

Miracle Recreation Equipment Company Authorized Representative

Name: Kevin Walker

Title: Manager

Signature: Kevin Walker

Date: 11/13/14

Micon Construction Authorized Representative

Name: Mitch Holle

Title: Principal

Signature: Mitch Holle

Date: 11/11/2014

February 1, 2013

D70046 Rev. T



Miracle *Miracle Warranty*

WARRANTY

Comprehensive Coverage with the Miracle® Limited Warranty.

**Buyer agrees that products sold by Miracle Recreation
Equipment Company
carry only the following warranties:**

1. **LIMITED WARRANTY FOR AS LONG AS YOU OWN THE PRODUCT** against structural failure due to corrosion and defects in materials and workmanship on aluminum deck posts, steel deck posts, the VersaLok® fastening system, and associated fastening hardware.
2. **LIMITED FIFTEEN (15) YEAR WARRANTY** against structural failure due to corrosion and defects in materials and workmanship on steel support legs and Mira-Therm™ II on MEGA TOWER®, TOTS' CHOICE®, KIDS' CHOICE®, CENTER STAGE®, Nexus® and Boulder Ridge® Rock Wall; on playsystem steel components including railings, rungs, and rigid climbers; and Rockite®.
3. **LIMITED FIFTEEN (15) YEAR WARRANTY** against structural failure due to corrosion and defects in materials and workmanship on all Play Cover® steel frames.
4. **LIMITED TEN (10) YEAR WARRANTY** on Play Terrain® Rubber Mulch safety surfacing against total color loss and for attenuation performance. Please contact your local representative for more information.
5. **LIMITED EIGHT (8) YEAR WARRANTY** on Play Terrain® Synthetic Turf safety surfacing for attenuation performance and appearance. Please contact your local representative for more information.
6. **LIMITED EIGHT (8) YEAR WARRANTY** against rot, UV deterioration and defects in materials and workmanship on all PlayCover® fabric (NOTE EXCEPTION - shades of red carry LIMITED THREE (3) YEAR WARRANTY).
LIMITED FIVE (5) YEAR WARRANTY against structural failure due to defects in materials and workmanship on Kidrox® Climbing Rocks.
8. **LIMITED FIVE (5) YEAR WARRANTY** against degradation of design loading capabilities on all Webscapes® Net Climbers and Nexus® Nets (NOTE EXCEPTION - Webscapes® Net Climbers and Nexus® Nets carry a LIMITED ONE (1) YEAR WARRANTY against defects in materials and workmanship).
9. **LIMITED THREE (3) YEAR WARRANTY** against failure due to defects in materials and workmanship on Trim Timbers®.
10. **LIMITED ONE (1) YEAR WARRANTY** against failure due to defects in materials and workmanship on Slashproof® Swing Seats and 360° Bucket Tot Seats for Swings.
11. **LIMITED ONE (1) YEAR WARRANTY** against structural failure due to defects in materials and workmanship on the following products and components: TODDLERS' CHOICE® main support materials and decks; pool slide support structures, stairways, landings, and railings; and bleachers.
12. **LIMITED ONE (1) YEAR WARRANTY** against failure due to defects in materials and workmanship on all MiracleTech™ Security products, including ParkWatch™, SonicScreen™ and SiteBrite™.
13. **LIMITED ONE (1) YEAR WARRANTY** against structural failure due to defects in materials and workmanship for all products and components that are not specifically listed above, including, without limitation, all moving parts, such as swing hangers, swivels, chains, whirls, trolleys and flexible climbers. **

****MOVING PARTS WARRANTY EXTENDED TO 3 YEARS FOR MOHAVE MEMBERS**

Go to www.miracle-recreation.com/warranty to register your product online.

Miracle Warranty

February 1, 2013

D70046 Rev. T

Miracle *Miracle* Warranty

WARRANTY

Comprehensive Coverage with the Miracle® Limited Warranty.

Buyer agrees that products sold by Miracle Recreation Equipment Company carry only the following warranties:

BUYER'S REMEDY: If any products prove defective or non-conforming under normal use and within the above-prescribed warranty periods, Buyer must promptly notify Miracle in writing at 878 E. Hwy 60, Monett, MO 65708 USA. Miracle will within a reasonable time and in its sole discretion repair or replace such defective or non-conforming product by providing replacement products or part(s) free of charge to the site. Miracle's limited warranties do not cover the cost of labor to remove defective or non-conforming part(s) or to install repaired or replacement part(s).

All warranty periods begin on the date of Miracle's invoice. Repaired and/or replacement part(s) are warranted only for the balance of the original limited warranty. All warranties extend only to the original Buyer/end user of products from Miracle or Miracle's authorized reseller and are not transferrable.

These limited warranties apply only to Miracle products that are erected and installed in conformance with Miracle's installation instructions, and that are maintained and inspected in conformance with Miracle's maintenance and operational instructions. These limited warranties specifically do not cover Miracle products: that have been modified, altered, or misused; that have not been used as designed or intended; to which non-Miracle parts have been added or substituted; or that have been damaged due to excessive wear and tear, vandalism, abnormal use, abuse, negligence, extraordinary weather or acts of God. MiracleTech Security™ systems limited warranties do not cover products serviced or repaired by unauthorized service providers. These limited warranties do not protect against color fade, except for PlayCover® as noted above. Buyer, by acceptance and use of these limited warranties, waives any rights it would otherwise have to claim or assert that this limited warranty fails of its essential purpose. Buyer agrees that venue for any court action to enforce these limited warranties shall be in Barry or Greene Counties in the State of Missouri.

EXCEPT AS EXPRESSLY WARRANTED HEREIN, MIRACLE EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING OR USAGE OF TRADE. IN NO EVENT SHALL MIRACLE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR OTHER PECUNIARY LOSS).

Go to www.miracle-recreation.com/warranty to register your product online.



w. www.sitescapesonline.com

p. 888.331.9464

402.421.9464

f. 402.421.9479

e. Info@sitescapesonline.com

LIMITED WARRANTIES

Effective June 2014

Finishes

- **Powder coat:** Powder coat products are warranted against defects in material or workmanship for a period of one year. For warranty to be valid, claims must be accompanied by the proper written maintenance record.
- **DuraCoat:** DuraCoat products are warranted against defects in material or workmanship for a period of five years.
- **Stainless Steel/Galvanized:** Stainless steel and galvanized products are warranted against defects in material or workmanship for a period of five years.

Structural Warranty

- Limited twenty year warranty against structural failure of steel bench frames or steel bench assemblies, table frames, trash receptacle frames, and planter frames.
- Limited 10 year breakage warranty on all ductile cast iron bench ends and components.
- Limited 5 year warranty against structural failure of any aluminum assemblies, frames or components.
- Limited three year warranty against structural failure of all bicycle racks.
- Limited ten year warranty against any structural failure of recycled plastic components.
- Limited five year warranty against any structural failure of Ipe and Western Red Cedar wood components.
- Limited 3 year warranty on all swivel devices.
- Limited one year warranty on any products not specified above.

All warranties commence on the date of invoice issued from SiteScapes, Inc. Should any failure occur within the warranty period, SiteScapes, Inc., upon written notification shall repair, replace or refund the purchase price of products determined in SiteScapes, Inc. reasonable judgment to be defective in workmanship or materials. SiteScapes, Inc. liability and the buyer's remedy under these warranties are limited to the repair, replacement or refund of the purchase price, at SiteScapes option, of products determined in SiteScapes reasonable judgment to be defective in workmanship or materials.

a. P.O. Box 22326

Lincoln NE, 68542



w. www.sitescapesonline.com

p. 888.331.9464

402.421.9464

f. 402.421.9479

e. info@sitescapesonline.com

SiteScapes will not be held responsible for the costs incurred in labor to remove, install, or replace the alleged defective product.

SiteScapes warranties do not cover any defects or failures resulting from vandalism, negligence, accidents, abuse, lack of maintenance, or improper use or installation. In addition, SiteScapes will not cover any defects or failure due to product that has been tampered with or altered, modified or repaired by anyone not previously approved by SiteScapes.

In addition, SiteScapes will not be held liable for ANY damage or injury as a result of product not that is not permanently anchored in place or not anchored properly.

All claims made under the terms of this warranty must be submitted in writing along with a copy of the original invoice to:

SiteScapes, Inc.
PO Box 22326
Lincoln, NE 68542



W. www.sitescapesonline.com

T. 888.331.9464

402.421.9464

F. 402.421.9479

E. info@sitescapesonline.com

PRODUCT MAINTENANCE AND CARE

You have chosen a high quality, environmentally friendly product that will last for years to come.

SiteScapes products have a UV resistant coating, designed to withstand the elements. However, cleaning is an integral part of maintaining the finish of these products. The finish warranty for these products requires that regular cleaning be performed at least twice a year and four times a year for products directly exposed to high salt content environments and/or coastal and seashore areas.

The conditions for this cleaning protocol are as follows:

- Use clean water and slight amounts of mild alkaline detergents. A 2/1 water/bleach mixture is recommended
- The cleaning effect may be increased by rubbing with a soft, non-scratch cloth with MODEST pressure.
- The temperature of the products being cleaned must not exceed 80 F.
- For removal of grease and oily substances isopropyl alcohol may be used.
- The cleaning solution must not be allowed to react for more than one hour.
- After cleaning rinse all surfaces with clean, cold water.
- A proper maintenance record must be kept and documented.
- Document must contain the following information:
 - Date
 - Name and address of performing party
 - Description of cleaning procedure and detergents used
 - Signature of person performing the cleaning procedure

In cases of severe scratching or vandalism, SiteScapes does offer touch up paint. This paint is an exact formulated color match and is available in a standard liquid form or a spray can applicator. Additional charges may apply.

FIBAR SYSTEMS PERFORMANCE WARRANTY

L I M I T E D W A R R A N T Y

Effective January 1, 2012

TWENTY-FIVE YEAR FibarSystem 300 Performance Limited Warranty:

This 25-year Limited Warranty applies only to FibarSystem 300 playground surface. FibarSystem 300 is warranted by The Fibar Group, LLC to the original purchaser, to meet or exceed Playground Surfacing Guidelines of the U.S. Consumer Product Safety Commission using ASTM Standard F1292 for a period of twenty-five (25) years from the certified date of installation, subject to the conditions and exclusions listed below.

TWENTY YEAR Fibar System 200 and

FIFTEEN YEAR Fibar System 100 Performance Limited Warranty:

This Limited Warranty applies to Fibar Systems 200 and 100. Fibar Systems 200 and 100 are warranted by The Fibar Group, LLC to the original purchaser, to meet or exceed Playground Surfacing Guidelines of U.S. Consumer Product Safety Commission using ASTM Standard F1292 for a period of twenty (20) years for System 200 and fifteen (15) years for System 100 from the certified date of installation, subject to the conditions and exclusions listed below.

LIFETIME FibarDrain Drain Strip and FibarFelt Materials Limited Warranty:

This Limited Warranty applies to FibarDrain Drain Strip and FibarFelt Material ("Materials"). These Materials are warranted by The Fibar Group, LLC to the original purchaser of the materials to be free from defects, including decay and biological degradation, for life from the certified date of installation, subject to the conditions and exclusions listed below.

THREE YEAR FibarMat, FibarGuard Borders, and ADA Ramp Limited Warranty:

This Limited Warranty applies to FibarMat wear mats, FibarGuard Borders, and Fibar's ADA Ramp ("Materials"). These Materials are warranted by The Fibar Group, LLC to the original purchaser of the Materials to be free from defects in material and workmanship for a period of three (3) years from the certified date of installation, subject to the conditions and exclusions listed below.

Warranty Performance:

The entire liability of The Fibar Group, LLC and the purchaser's sole remedy in the event the Materials and/or System do not conform,

the Limited Warranty shall be limited to replacement of the defective Materials and/or System and shall not include installation or consequential damages or refund. This Limited Warranty does not cover normal wear.

Conditions:

This Limited Warranty is conditioned upon the System being properly installed and maintained by the purchaser in accordance with the written instructions provided by The Fibar Group, LLC.

Acts Invalidating Warranty:

Incorrect installation, failure to install all material delivered, failure to maintain the surface depth thereof, failure to use FibarMat wear mats at slide exits, under all swings and tire swings [except enclosed or bucket tot swings], use of the System and/or Materials with others not provided by The Fibar Group, LLC, abnormal use, lack of or improper maintenance, or vandalism shall void this Limited Warranty and The Fibar Group, LLC shall have no responsibility with respect to damage resulting therefrom. In addition, changed impact attenuation characteristics created by sand or other materials tracked into the System are not covered by this Warranty.

Disclaimers:

No other Warranties. The Fibar Group, LLC disclaims all other Warranties expressed or implied, including but not limited to implied Warranties of fitness or merchantability and fitness for a particular purpose. In no event shall The Fibar Group, LLC or its suppliers be liable for any damages whatsoever (including, without limitation, indirect, special, incidental, or consequential damages arising out of the use of or inability to use the System), even if The Fibar Group, LLC has been advised of the possibility of such loss. Because some states do not allow the exclusion of limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

Legal Remedies:

This Limited Warranty gives you specific legal rights, and you may have other rights that vary from state to state.

Prior Statements of Warranty:

This warranty supersedes and replaces any previous warranties.

Customer Service: For emergency service: Contact your authorized Representative or The Fibar Group, LLC, 80 Business Park Drive, Suite 300, Ammonk, NY 10504-1705. Call toll-free 800-342-2721 or 914-273-8770 / Fax: 914-273-8659. E-mail: info@Fibar.com.

©2012 The Fibar Group, LLC U.S. Patent Numbers 4,679,963; 5,026,207 and 5,076,726.



MAINTENANCE & WARRANTY for Greenfields Line of Products

Equipment Maintenance Guidelines

Greenfields' equipment uses sealed bearings and is galvanized and powder coated in order to withstand the harshest environments. Therefore, maintenance requirements for our equipment are minimal. If nuts, bolts or screws should come loose, thread lock can be applied to prevent future instances. No other maintenance issues should arise; however, if in the event a problem does occur, Greenfields maintenance can be reached at 888-315-9037 x105. It is recommended to provide photos (if possible) to expedite handling of the issue.

Greenfields Warranty Information

Greenfields warrants its products to be free from defect in materials and workmanship during normal use and installation and in accordance with our published specifications.

Further warrants as follows:

- Limited 10-year warranty on steel posts, welds, bars, and metal accessories.
- Limited 5-year warranty on bearings and steel pins.
- Limited 2-year warranty on molded fiberglass seats, plastics, clamps, and rubber parts.
- Limited 1-year warranty on hydraulic pistons and all KickBox stands.

This warranty is valid only if:

- The equipment is erected in conformity with the installation instructions and specifications furnished by Greenfields.
- The equipment has not been subject to vandalism, misuse, neglect, or accident.
- The equipment has NOT been modified or altered by anyone other than Greenfields authorized personnel and/or its designers in any respect.

This warranty does not cover cosmetic items such as: scratches, dents, marring, fading, discoloring, weathering, powder coating, wear and tear or normal level of rusting.

Upon written notification to Greenfields of a product's failure to conform to any of the aforementioned warranties during the applicable warranty period, Greenfields shall correct such failure/nonconformity by repairing the defective part(s) or providing replacement part(s) within 60 calendar days of receipt of the notification.

Greenfields shall ship the required replacement part(s) to the site free of charge, but will not be responsible for providing labor or the cost of labor for removing defective part(s) or installing replacement part(s). Greenfields will warranty the replacement part(s) for the remainder of the original warranty period.



Furthermore, no representation, oral or written, of any individual may be substituted for this exclusive limited warranty.

To the extent permitted by law, Greenfields shall not be liable for any direct, indirect, special incidental or consequential damages, which are expressly excluded from this sale.

To make claims under the terms of this warranty, please send the buyer's written statement of claim, along with a copy of the original invoice, any maintenance records, and supporting photographs to:

- Greenfields' local representative
- Directly to Greenfields via e-mail: info@greenfieldsfitness.com
- Directly to Greenfields via fax: 866-308-9719

Other product information

- Greenfields will continue to develop the equipment and therefore reserve the right to change the design specifications without notice.
- The equipment is designed for frequent use by individuals weighing up to 300 pounds.
- The equipment is NOT intended to be used by individuals younger than 13 years of age (i.e. use of this fitness equipment is for anyone older than 13 years of age).

Installation

Greenfields equipment is constructed from heavy steel pipes and is subject to heavy forces and torques when in use. Extra care must be taken to ensure that the equipment is securely installed so that it can be safely enjoyed for years to come.

There are two methods of installation for the equipment:

1. Permanent in-ground installation in which the equipment post extensions are placed in concrete footings.
2. Surface mount installation with posts bolted to concrete slab a minimum of 5" thick.

Greenfields recommends hiring a licensed installation company to ensure that the equipment is installed correctly and according to Greenfields' specifications.

This adult outdoor fitness equipment not intended for use by children under 13 years of age. Adult outdoor fitness equipment is not covered by ASTM F 1487 and there are no current standards for adult outdoor fitness equipment. Greenfields makes every effort to provide safe and durable products and will constantly seek ways to improve its products.

Fall Surfacing - Impact attenuating fall surfacing is not required for adult outdoor fitness equipment but for ADA/ABA compliance the route of travel must be a firm and stable surface. Grass is not considered an accessible surface. Recommended surfacing materials are decomposed granite, concrete, bonded rubber or poured-in-place surfacing. Engineered wood fiber should not be used with this equipment. **Please be advised that the use of decomposed granite is known to increase the normal wear and tear of all footrests.**





Poligon Limited Warranty and Limitations

PorterCorp warrants the building structure for 10 years from shipping date with the following limitations. (Paint System Warranty 7.2fm24 is a separate document.) PorterCorp limits its warranty to the supply of materials that will fit, be structurally sound, and can be assembled with normal expertise and with tools required and found in the construction trades. It is expressly understood that PorterCorp's Liability be limited to repair or replacement of nonconforming material at time of delivery.

PorterCorp does not warrant product for defects caused by erection, harsh site conditions, lack of maintenance, and/or other conditions beyond PorterCorp's control.

PorterCorp shall not be held liable for field alterations. PorterCorp shall not be held liable for meeting unspecified building codes or for updating designs or specifications to meet new building codes or insurance standards either existing or updated. PorterCorp shall not be responsible for delays due to missing and/or nonconforming parts. Parts short-shipped and non-conforming parts will be replaced or reworked by PorterCorp as a top priority. Any rework of non-conforming parts by the contractor must be authorized by PorterCorp prior to rework. PorterCorp shall not be liable for any act of God, fire, vandalism, settlement, incidental or consequential damages, erosion of foundation, or extreme site conditions.

This Limited Warranty supersedes all other warranties expressed or implied.

The warranty on metal roofing and shingles will be as passed through PorterCorp's Supplier as per their warranty; contact Customer Service for this Supplier Warranty.

This Limited Warranty is conditional upon payment in full to PorterCorp within terms. PorterCorp will not be held responsible for any materials that were not properly stored prior to installation. Liability under this Warranty is limited in that it shall not exceed the original sales price of the components as supplied by PorterCorp.

4240 No. 136th Ave.
Holland, MI 49424

800.354.7721

Ph: 616.399.1963

Fx: 616.399.9123

www.portercorp.com

7.2fm19 03/07/11



1809 W. 4TH STREET
 TEMPE, AZ 85281
 PHONE: 602-954-0000
 FAX: 623-223-1143
 WWW.FLEXGROUND.COM

Standard Warranty Wording

FLEXGROUND, LLC warrants that its (PRODUCT NAME) safety surfacing installed at the above Project location shall be free from defects in workmanship and materials for a period of (# OF YEARS) from the above initiation date.

THE WARRANTY CONTAINED HERE IS EXPRESSLY IN LIEU OF (AND PURCHASER HEREBY WAIVES) ALL OTHER WARRANTIES, EXPRESSED, STATUTORY, OR IMPLIED IN FACT OR BY LAW, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PURCHASER FURTHER AGREES THAT IN NO EVENT SHALL FLEXGROUND, LLC. ON ANY CLAIM OF ANY KIND HAVE ANY LIABILITY TO BUYER FOR LOSS OF USE, LOSS OF PROFITS OR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY IS NON-TRANSFERRABLE.

FLEXGROUND, LLC, and the Purchaser Expressly agree that the remedies provided in this warranty are in lieu of all other remedies against FLEXGROUND, LLC which Purchaser might otherwise have, to include but not limited to, consequential damages, direct damages, and indirect damages, and further that FLEXGROUND, LLC sole obligations hereunder are limited to the repair or replacement of defective material. If the same material is not available FLEXGROUND, LLC reserves the right to supply material of a similar grade, color and quality. Unless reasonable written notice is provided to FLEXGROUND, LLC by purchaser of a warranty claim all claims shall be barred. Reasonable notice is defined as written notice received thirty (30) days from the date the defect was either discovered or should have been discovered with reasonable diligence.

This warranty does not cover damage due to lifting or shifting of the sub base or substrate beneath the sub base, cracking, moisture issues, alkali, stains, cuts, burns, gouges (such as high heel shoes), shrinking of not more than $\frac{3}{8}$ ", damage caused by use other than intended, normal wear and tear or any type of vandalism or acts of God.

To retain this warranty for its specified duration the owner of the above site agrees to notify FLEXGROUND, LLC within thirty (30) days of noticing defect. The owner also agrees to do routine maintenance as outlined in the FLEXGROUND Maintenance manual. Any specified sealing must be completed at owners expense and will be outlined in the specific warranty for each product.

Products Available:

FlexGround/EnduraFlex: 5 YEARS

UltraFlex: 7 YEARS

Synthetic Turf/FlexGrass: 5 YEARS

FlexTop: 2 YEARS

FlexGrout: 3 YEARS

Xtreme Surfacing: 10 YEARS

KoolFlex: 2 YEARS

FlexFix: 90 DAYS

Place after Tab 4b

Will members be required to sign any supplemental end-user agreements (sales or maintenance.)?

☐ Yes ☒ No

If yes, review/revise your agreement(s) for any terms that conflict with the Mohave terms and conditions. In addition, review for the following common issues:

Acceptable agreements **shall** include:

- o Non-appropriations clause;
- o Contract or agreement must be governed by the laws of the State of Arizona;
- o Net payment is thirty (30) days.

Agreements **shall not** include:

- o Terms beyond one year;
- o Waiver of right for a jury trial;
- o Requirement of upfront payment by member when purchase order is placed;
- o Entire agreement language;
- o Auto-renewal language.

Attach your reviewed/revise agreement(s). **Unacceptable agreement(s) may render your bid nonresponsive.**

Place after Tab 4c

Supplementary Information**Installation Methodology Description**

Provide detailed information explaining the methodology to be used for installation. Please provide an example.

See attached installation methodology description

ASTM Compliance Certifications

Provide copies of certificates or letters from the manufacture for the offered structures, equipment and safety surfaces certifying compliance with ASTM F1487, F2372, F1292, F2075, F2223, F2479, F1951, F1916 and F2049.

See attached letters/certifications from Miracle, Fibar, Flexground

Licensing

Provide evidence of license(s) your firm holds to perform work under an awarded contract.

See attached licensing information and personnel certifications.

General Building Contractors
License #744198 CA #154926 AZ #0054869 NV
1616 Sierra Madre Circle, Placentia, CA 92870 Ph: (800) 949-0203 Fx: (714) 666-1007

November 14, 2014

Mohave Educational Services Cooperative, Inc
625 E. Beale Street
Kingman, AZ 86401

Attn: Mike Nentwig

INVITATION FOR BID 14X-1121: Playground, Fitness and Related Equipment.

Thank you for giving us the opportunity to participate in the playground, fitness and related equipment bid. We look forward to the possibility of working with the Mohave Educational Services Cooperative, Inc on this project, as well as in the future.

Micon Construction, Inc. has extensive experience in the installation of play equipment, splashpads, water play features, site furnishings, shade structures, athletic equipment and various playground surfacings.

We have the versatility necessary to complete projects, such as these, in a 'turnkey' manner, without the use of subcontractors. In addition, we have a close relationship with the equipment vendor for this project (Miracle). This enables us to coordinate deliveries more efficiently, without delaying the construction process.

Our proposal includes the products and design by Miracle, which provides a line of durable and visually impressive playground equipment. Miracle is one of the oldest and largest playground manufacturers. Each playground is designed to fit your every need. They offer a wide range of play components, from free standing features to colossal play structures.

Our goal is to provide optimum services to the Mohave Education Services Cooperative and it's vendors at the most competitive pricing. We pride ourselves in the quality and efficiency of our services offered and work together as a team to make sure that our customers are completely satisfied.

Again, thank you for the opportunity to submit a proposal and hope to hear from you soon!

Sincerely,
Micon Construction of Arizona, Inc

Kimberly Garrigues

MICON CONSTRUCTION OF ARIZONA, INC.

115 of 361

General Building Contractors
License #744198 CA #154926 AZ #0054869 NV

IMPORTANT NOTICE

YOU MUST:

- REPORT DISSOCIATION OF QUALIFYING PARTY IN WRITING WITHIN 15 DAYS.
[SEE A.R.S. § 32-1154(A)(19) AND § 32-1151.01]
- REPORT A CHANGE OF ADDRESS IN WRITING WITHIN 30 DAYS.
[SEE A.R.S. § 32-1151(B)(1)]
- REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY.
[SEE A.R.S. § 32-1151.01]
- REPORT ANY CHANGE OF LEGAL ENTITY SUCH AS ANY CHANGE IN THE OWNERSHIP IN SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY.
[SEE RULE R-4-9-110]

Micon Construction Of Arizona Inc

1616 Sierra Madre Cir
Placentia, CA 92870-6626

THIS IS YOUR IDENTIFICATION CARD DO NOT DESTROY



LICENSE EFFECTIVE THROUGH: 04/30/2016
STATE OF ARIZONA
Registrar of Contractors CERTIFIES THAT
Micon Construction Of Arizona Inc



CONTRACTORS LICENSE NO 195069 CLASS A
General Engineering

THIS CARD MUST BE
PRESENTED UPON DEMAND

William A. Mundell
DIRECTOR, ARIZONA REGISTRAR OF CONTRACTORS

IMPORTANT NOTICE

YOU MUST:

- REPORT DISSOCIATION OF QUALIFYING PARTY IN WRITING WITHIN 15 DAYS.
[SEE A.R.S. § 32-1154(A)(19) AND § 32-1151.01]
- REPORT A CHANGE OF ADDRESS IN WRITING WITHIN 30 DAYS.
[SEE A.R.S. § 32-1151(B)(1)]
- REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY.
[SEE A.R.S. § 32-1151.01]
- REPORT ANY CHANGE OF LEGAL ENTITY SUCH AS ANY CHANGE IN THE OWNERSHIP IN SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY.
[SEE RULE R-4-9-110]

Micon Construction Of Arizona Inc

Micon Construction Of Arizona Inc
1616 Sierra Madre Cir
Placentia, CA 92870-6626

THIS IS YOUR IDENTIFICATION CARD DO NOT DESTROY



LICENSE EFFECTIVE THROUGH: 05/31/2016
STATE OF ARIZONA
Registrar of Contractors CERTIFIES THAT
Micon Construction Of Arizona Inc



CONTRACTORS LICENSE NO 154926 CLASS L-5
COMMERCIAL PLAYGROUND EQUIPMENT

THIS CARD MUST BE
PRESENTED UPON DEMAND

William A. Mundell
DIRECTOR, ARIZONA REGISTRAR OF CONTRACTORS

1616 E. Sierra Madre Circle / Placentia, CA. 92870-6631 / 714.666.0604 / 714.666.1007

19420 Kennedy Drive Mayer, AZ. 86333

800.949.0203



Manufacturer Certified Installer



National Recreation and Park Association

Let it be known that

MITCH HOLLE

has met the requirements of the standards set forth by the

National Certification Board

and is hereby granted certification as a

Certified Playground Safety Inspector



**Certified
Playground
Safety Inspector**

Eddie Hill

NATIONAL CERTIFICATION BOARD CHAIRPERSON

October 03, 2014

DATE CERTIFIED

Barbara Trespine

NRPA PRESIDENT AND CEO

24981-1117

CERTIFICATION NUMBER

November 01, 2017

EXPIRATION DATE



National Recreation
and Park Association

National Recreation and Park Association

Let it be known that

STEVE WISECARVER

has met the requirements of the standards set forth by the

National Certification Board

and is hereby granted certification as a

Certified Playground Safety Inspector



**Certified
Playground
Safety Inspector**

Eddie Mill

NATIONAL CERTIFICATION BOARD CHAIRPERSON

October 03, 2014

DATE CERTIFIED

Barbara Tulipano

NRPA PRESIDENT AND CEO

24990-1117

CERTIFICATION NUMBER

November 01, 2017

EXPIRATION DATE



National Recreation
and Park Association

National Recreation and Park Association

Let it be known that

STEVEN HOWARD

has met the requirements of the standards set forth by the

National Certification Board

and is hereby granted certification as a

Certified Playground Safety Inspector



**Certified
Playground
Safety Inspector**

Eddie Hill

NATIONAL CERTIFICATION BOARD CHAIRPERSON

October 03, 2014

DATE CERTIFIED

Barbara Tulgane

NRPA PRESIDENT AND CEO

24982-1117

CERTIFICATION NUMBER

November 01, 2017

EXPIRATION DATE



National Recreation
and Park Association

National Recreation and Park Association

Let it be known that

KIMBERLY GARRIGUES

has met the requirements of the standards set forth by the

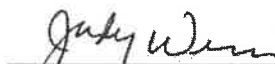
National Certification Board

and is hereby granted certification as a

Certified Playground Safety Inspector



Certified
Playground
Safety Inspector


NATIONAL CERTIFICATION BOARD CHAIRPERSON

3/6/2014

DATE CERTIFIED


NRPA PRESIDENT AND CEO

23743-0417

CERTIFICATION NUMBER

4/1/2017

EXPIRATION DATE



National Recreation
and Park Association

National Recreation and Park Association

Let it be known that

MONTE CORLEY

has met the requirements of the standards set forth by the

National Certification Board

and is hereby granted certification as a

Certified Playground Safety Inspector



**Certified
Playground
Safety Inspector**

Candace Paulins

NATIONAL CERTIFICATION BOARD CHAIRPERSON

Barbara Tuligone

NRPA PRESIDENT AND CEO

8/29/2012

DATE CERTIFIED

20610-0915

CERTIFICATION NUMBER

9/1/2015

EXPIRATION DATE



National Recreation
and Park Association

MICON CONSTRUCTION OF ARIZONA

REFERENCES

ADVENTURE PLAYGROUND & SPLASHPAD.....\$213,164.00

Anthem, AZ.....complete 10/14

Installation of playground equipment, installation of vortex equipment, concrete, etc.

Owner: Anthem Community Council

3701 W. Anthem Way #201

Anthem, AZ 85086

Neal Shearer, Project Manager

623.742.6013

TOLLESON SPLASHPAD.....\$68,790.00

Tolleson, AZ.....complete 10/14

Installation of vortex equipment, plumbing, concrete, drainage..

GC: Valley Rain

1614 East Curry Rd.

Tempe, AZ 85281

Brett Fowler, Project Manager

602.828.4029

WILLOW CREEK DOG PARK.....\$27,160.00

Prescott, AZ.....complete 10/14

Concrete, installation of shade equipment etc.

Owner: Cameron Construction (City of Prescott project)

Jason Cameron, Project Manager

210.410.0277

SUNSET PARK SPLASHPAD.....\$269,188.00

Sedona, AZ.....complete 6/14

Demo, concrete, installation of vortex equipment, installation of shade equipment etc.

Owner: City of Sedona

102 Roadrunner Dr.

Sedona, AZ 86336

David Peck, Project Manager

928.239.0475

VARIOUS SITES (Cielito Park, Coronado Park, Encanto Park).....\$513,616.52

Phoenix, AZ.....complete 3/14

Demo, installation of playground equipment, shades, concrete, etc.

Owner City of Phoenix

251 W. Washington St.

Phoenix, AZ 85003

Joe Diaz, Project Manager

602.534.2161

MIRACLE RECREATION EQUIPMENT COMPANY
878 E HIGHWAY 60
MONETT, MISSOURI 65708 USA
TOLL FREE: 1-800-523-4202
PHONE: 417-235-6917 • FAX: 417-235-6816
WORLD WIDE WEB: <http://www.miracle-recreation.com>



122 of 361
COMMERCIAL PLAYGROUNDS • FITNESS CLUSTERS
ROPE CLIMBERS • BOULDER CLIMBERS
CLIMBERS, SPRING RIDERS & WHIRLS
PICNIC TABLES, BENCHES & GRILLS • SLIDES & SWINGS
BASKETBALL GOALS, BACKSTOPS & SOCCER GOALS
BLEACHERS & PLAYER BENCHES
POOL SLIDES

November 7, 2014

Reference: Miracle Recreation playground equipment compliance

To Whom It May Concern:

MIRACLE RECREATION EQUIPMENT COMPANY is pleased to state that our play equipment meets or exceeds the requirements of both the United States Consumer Product Safety Commission (CPSC) "Public Playground Safety Handbook" and the ASTM F1487 "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use".

It is important to realize that both the CPSC Handbook and the ASTM F1487 Standard apply to much more than the design and manufacture of the play equipment. Impact absorbent surfacing, installation, operation and maintenance are all key components of each document and, as they are not provided by Miracle Recreation, we cannot make any representations as to whether or not they meet the relevant provisions of these documents.

Miracle Recreation is also pleased to state that our play equipment meets the accessibility requirements for Play Areas set forth by the U.S. Dept. of Justice's ADA Standards for Accessible Design (2010 edition).

Should you have any questions, please feel free to call Miracle Recreation at our headquarters in Monett, Missouri. Our toll free number is (800) 523-4202. Thank you for considering Miracle Recreation's play equipment for your playground needs.

Sincerely,

Bob Stluka, CPSI

Compliance Technician

MIRACLE RECREATION EQUIPMENT COMPANY

cc: Monte Corley



November 10, 2014

Mohave Educational Services Cooperative, Inc.
Attention: Contracts Department
625 East Beale Street
Kingman, AZ 86401

Re: Fibar® Engineered Wood Fiber Surfacing Compliance

To Whom It May Concern:

THE FIBAR GROUP, LLC is pleased to confirm that Fibar® Engineered Wood Fiber Playground Safety Surfaces comply with all current legal requirements according to the Americans with Disabilities Act and meet or exceed the ASTM Standards that are applicable to play surfacing, as follows:

- United States' Consumer Product Safety Commission (CPSC) *Public Playground Safety Handbook*
- ASTM F 1487, 2372, 2223, and 2479 by virtue of Referenced Documents in Standard as they relate to surfacing
- ASTM F 1292 *Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment*
- ASTM F1951 *Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment*
- ASTM F2075 *Standard Specification for Engineered Wood Fiber for Use as a Playground Safety Surface Under and Around Equipment*

It is important to realize that the CPSC Handbook and ASTM Standards don't cover all aspects of a successful playground. Installation, operation, and maintenance are key to a functioning and lasting playground.

Should you have any questions, please feel free to call The Fibar Group at 800-342-2721. Thank you for considering Fibar for safety surfacing for your play areas.

Sincerely,

Henry Mustacato
President

IPEMA Certificate of Compliance



To verify product certification,
visit www.ipema.org

MANUFACTURER

Flexground, LLC
1809 W. 4th Street

Tempe, AZ 85281

PRODUCT NBR	PRODUCT LINE	DESCRIPTION
UFTPV4	UltraFlex Poured In Place Thick, 4' CFH	Rubber Poured in Place Playground Safety Surfacing
UFTPV5	UltraFlex Poured In Place Thick, 5' CFH	Rubber Poured in Place Playground Safety Surfacing
UFTPV6	UltraFlex Poured In Place Thick, 6' CFH	Rubber Poured in Place Playground Safety Surfacing
UFTPV9	UltraFlex Poured In Place Thick, 9' CFH	Rubber Poured in Place Playground Safety Surfacing

ISSUE DATE: 11/12/14 -

In the interest of public playground safety, IPEMA provides a third-party certification service whereby TÜV SÜD America validates a manufacturer's certification of conformance to the ASTM F1292-13, Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment Standard.

The manufacturer listed below has received written validation from TÜV SÜD America that the products listed below conform with the requirements of ASTM F1292-13.

IPEMA INTERNATIONAL
PLAY EQUIPMENT
MANUFACTURERS
ASSOCIATION



You may verify this certificate by visiting IPEMA's website at <http://ipema.org>

IPEMA Certificate of Compliance



To verify product certification,
visit www.ipema.org

MANUFACTURER

Flexground, LLC
1809 W. 4th Street

Tempe, AZ 85281

PRODUCT NBR	PRODUCT LINE	DESCRIPTION
XT10	Xtreme Surfacing	4" Depth, 10' CFH Non porous playground surfacing
XT4	Xtreme Surfacing	2" depth, 4' CFH Non porous playground surfacing
XT6	Xtreme Surfacing	2.5" depth, 6' CFH Non porous playground surfacing
XT7	Xtreme Surfacing	3.0" Depth, 7' CFH Non porous playground surfacing

ISSUE DATE: 11/12/14 -

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IPEMA INTERNATIONAL
PLAY EQUIPMENT
MANUFACTURERS
ASSOCIATION



You may verify this certificate by visiting IPEMA's website at <http://ipema.org>

IPEMA Certificate of Compliance



To verify product certification,
visit www.ipema.org

MANUFACTURER

Flexground, LLC
1809 W. 4th Street

Tempe, AZ 85281

PRODUCT NBR	PRODUCT LINE	DESCRIPTION
FT10	FlexGrass Safety Surfacing Thick, 10' 4.5" CFH	Synthetic Grass & Rubber Poured in Place Playground Safety Surfacing up to 10'
FT6	FlexGrass Safety Surfacing 3" Thick, 6' Fall	Synthetic Grass and Rubber Poured In Place Playground Safety Surfacing up to 6'

ISSUE DATE: 11/12/14 -

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IPEMA Certificate of Compliance



To verify product certification,
visit www.ipema.org

MANUFACTURER

Flexground, LLC
1809 W. 4th Street

Tempe, AZ 85281

PRODUCT NBR	PRODUCT LINE	DESCRIPTION
FG4	FlexGround Poured In Place	2" Thick, 4' Fall Rubber Poured In Place Playground Safety Surfacing up to 4'
FG5	FlexGround Poured In Place	2.5" Thick, 5' Fall Rubber Poured In Place Playground Safety Surfacing up to 5'
FG6	FlexGround Poured In Place	3" Thick, 6' Fall Rubber Poured In Place Playground Safety Surfacing up to 6'
FG8	FlexGround Poured In Place	3.5" Thick, 8' Fall Rubber Poured In Place Playground Safety Surfacing up to 8'
FG9	FlexGround Poured In Place	4" Thick, 9' Fall Rubber Poured In Place Playground Safety Surfacing up to 9'

ISSUE DATE: 11/12/14 -

In the interest of public playground safety, IPEMA provides a third-party certification service whereby TÜV SÜD America validates a manufacturer's certification of conformance to the ASTM F1292-13, Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment Standard.

The manufacturer listed below has received written validation from TÜV SÜD America that the products listed below conform with the requirements of ASTM F1292-13.

You may verify this certificate by visiting IPEMA's website at <http://ipema.org>



America

IPEMA Certificate of Compliance



To verify product certification,
visit www.ipema.org

MANUFACTURER

Flexground, LLC
1809 W. 4th Street

Tempe, AZ 85281

PRODUCT NBR	PRODUCT LINE	DESCRIPTION
EFTPV4	EnduraFlex Poured In Place Thick, 4' CFH	Rubber Poured in Place Playground Safety Surfacing
EFTPV5	EnduraFlex Poured In Place Thick, 5' CFH	Rubber Poured in Place Playground Safety Surfacing
EFTPV6	EnduraFlex Poured In Place Thick, 6' CFH	Rubber Poured in Place Playground Safety Surfacing
EFTPV8	EnduraFlex Poured In Place Thick, 8' CFH	Rubber Poured in Place Playground Safety Surfacing
EFTPV9	EnduraFlex Poured In Place Thick, 9' CFH	Rubber Poured in Place Playground Safety Surfacing

You may verify this certificate by visiting IPEMA's website at <http://ipema.org>

ISSUE DATE: 11/12/14 -

In the interest of public playground safety, IPEMA provides a third-party certification service whereby TÜV SÜD America validates a manufacturer's certification of conformance to the ASTM F1292-13, Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment Standard.

The manufacturer listed below has received written validation from TÜV SÜD America that the products listed below conform with the requirements of ASTM F1292-13.





REPORT NUMBER
QI1406593 Rev 1



America

PREPARED FOR
FLEXGROUND, LLC
1809 WEST 4TH STREET
TEMPE, AZ 85281

ATTENTION
JESSICA KILE

PO#
62614

REPORT DATE
SEPTEMBER 16, 2014

TÜV SÜD America, Inc.
47523 Clipper Street
Plymouth, Michigan 48170 USA
Phone: 734.455.4841
Fax: 734.455.6590
www.TUVAmerica.com

TÜV SÜD America, Inc. letters, reports and data are for the exclusive use of our customers to whom they are addressed and shall not be reproduced, except in full, without the written approval of the Laboratory. Our letters and reports apply only to those samples tested, and are not necessarily indicative of the qualities of apparent identical or similar products. Samples not destroyed in testing are retained for a maximum of thirty (30) days. The use of the name TÜV SÜD America, Inc. or its Seal or Insignia, are not permitted to be used by the customer on their communications, brochures, advertising, reports or other forms of media, without prior written approval. Reported test parameters are generally specified as set points of testing equipment. All documentation and data utilized in the generation of this report are available upon request.



Report Number: QI1406593 Rev 1
September 16, 2014

REPORTED / APPROVED BY:

TÜV SÜD America, Inc.

A handwritten signature in black ink, appearing to read 'Tim Lockstein'.

Reported by: Tim Lockstein, Product Safety Engineer
CERTIFICATION TEST PROGRAMS

A handwritten signature in black ink, appearing to read 'David Splane'.

Approved by: David Splane, Regional Manager
CERTIFICATION TEST PROGRAMS



Report Number: QI1406593 Rev 1
September 16, 2014

PURPOSE

The purpose of this test report is to present the test results obtained during the performance of a test program. This report includes a brief description of the samples presented for test, a list of the documents presented as test instructions, and a summary of the testing performed and the results obtained. Applicable requirements and conclusions are based on the criteria provided by our client, or as specified in the reference document(s).

WORK REQUESTED / REFERENCE DOCUMENT(s)

Perform testing in accordance with ASTM F1951-14, Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment.

TEST SEQUENCE

1. Wheelchair work measurement method – straight propulsion with no material on a flat surface with a grade of 7.1%.
2. Wheelchair work measurement method – straight propulsion with material and no grade.
3. Wheelchair work measurement method – turning 90° with no material on a flat surface with a grade of 7.1%.
4. Wheelchair work measurement method – turning 90° with material and no grade.

Testing was performed September 16, 2014.

SAMPLE DESCRIPTION

Flexground, LLC, submitted one (1) poured in place sample in three (3) pieces (38.0" x 54.0" x 4.5" each) identified as Flexground.

- Two layer system consisting of a 4.0 inch base of bonded rubber buffing, and 0.50 inch top surface made from adhered EPDM rubber granules.



Report Number: QI1406593 Rev 1
September 16, 2014

TESTING PERFORMED

ACCESSIBILITY OF SURFACE SYSTEMS

Procedure

Sample material, Flexground material, was assembled at TÜV SÜD America, Inc.'s test facility. The poured-in-place (PIP) samples were pre labeled by manufacturer for proper alignment. PIP samples were laid out, and abutted to one another according to manufacturers labeling. The sample material was tested, propelling the wheelchair with four even propulsion strokes, per trial, across the material 5.56 feet, within eight seconds. This process was repeated five times for each test (straight and 90° turn propulsions).

Results

The average work force over one foot, in pound force-inch values, for straight propulsion and for turning with material surface in place, shall be less than the average work per foot values for straight propulsion and for turning, respectively, on a hard, smooth, surface with a grade of $7.1\% \pm 2\%$, (1:14).

Discard the high and low work per foot values and average the remaining three trials to determine the average work per foot required to negotiate the test surface and the hard, smooth surface with a grade of $7.1\% \pm 2\%$, (1:14).

Conclusion

The 4.5 inch material identified as "Flexground" met the requirements of ASTM F1951-14.

Sample Disposition

The sample material will be retained by TÜV SÜD America, Inc., for additional testing as requested by Flexground, LLC (TUV SUD America's Engagement QI1408875 & QI1409209). Unused material will be disposed of at the discretion of TÜV SÜD America, Inc., unless otherwise requested by Flexground, LLC after 15 days.



Report Number: QI1406593 Rev 1
September 16, 2014

TEST EQUIPMENT

TÜV SÜD America, Inc.'s calibration system meets the requirements of ISO 17025.

TÜV ID	Description	Manufacturer	Model	Calibration Due
PLYP00043	Signal Conditioner	Daytronics	3370	12/14
PLYP00047	Reaction Torque Sensor	Lebow	2110220500	12/14
PLYP00015	Digital Protractor	Mitutoyo	Pro 360	06/15
PLYP00151	Wheelchair	Quickie	Q2	NCR
PLYP00142	Penetration Thermocouple	Omega	88312K	12/14
PLYP00143	Digital Thermometer	Fluke	51-2	12/14
PLYP00152	Accessibility Fixture	DTL	N/A	NCR
PLYP00136	Balance	Toledo Scale	4181	06/15
PLYP00145	Air Pressure Gauge	Westward	2HKX9	03/15
PLYP00071	Thermohygrometer	Extech Instruments	445702	12/14

NCR – No Calibration Required

REMARKS:

- Per ASTM F1951-14, section 7.1.2 Test Wheelchair Rider; a 165 + 11, -4.4lb test wheelchair rider shall propel the wheelchair during testing. The rider's weight was measured at 174lbs prior to testing.
 - The wheelchair rider weight was 174 pounds, which combined with the wheelchair for a total of 222.7 pounds.
- Per section 7.1.3 Weight of Total System- The total weight of the wheelchair Rider System, including any distance measurement or data acquisition equipment residing on the wheelchair shall be a minimum of 187.2 lb and a maximum of 255 lb.
- Revision 1: The original test was performed using a 1.25 inch synthetic turf over the 4.5 inch Flexground, which accompanied the sample. The sample should have been tested without the turf. In addition the sample was incorrectly identified as "Flexgrass".

Page 6: Test Data



Report Number: QI1406593 Rev 1
September 16, 2014

Test Date: 9/16/14 Surface Temperature: 21.2°C
Report number: QI1406593 Rev1 Ambient Temperature: 21.3°C
Customer: Flexground, LLC Ambient Humidity: 44%
Product Brand name: Flexground (4.5 inches)

Trial #	No Material (work per foot), (lbf-in)	With Material (work per foot), (lbf-in)
Straight propulsion trial 1	121.576	80.0364
Straight propulsion trial 2	121.209	78.2935
Straight propulsion trial 3	120.922	83.6442
Straight propulsion trial 4	121.233	77.8457
Straight propulsion trial 5	120.561	78.5373
Straight propulsion average:	121.121	78.9557
90° Turn propulsion trial 1	170.425	126.824
90° Turn propulsion trial 2	160.916	119.004
90° Turn propulsion trial 3	162.881	112.697
90° Turn propulsion trial 4	165.828	115.254
90° Turn propulsion trial 5	159.589	114.156
Turn propulsion average:	163.589	116.138

Wheelchair Rider Weight: 174.0 Lbs.
Wheelchair tire pressures checked / Confirmed: X Yes

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MIRACLE RECREATION EQUIPMENT COMPANY

[Quotation]

See following page.



Miracle Recreation Equipment Co

PO Box 204757
Dallas TX 75320-4757

Phone # 800-264-7225

Fax # 877-215-3869

E-mail sales@miracleplayground.com

Web Site www.miracle-recreation.com

QUOTATION

Date	Estimate #
9/5/2018	2018-13858

PO#

Name / Address
Town of Chino Valley Attn: Scott Bruner

**WE HAVE A NEW REMITTANCE ADDRESS!
ALL PURCHASE ORDERS & PAYMENTS
MUST BE MADE OUT TO:
Miracle Recreation Equipment Co
PO Box 204757
Dallas, TX 75320-4757**

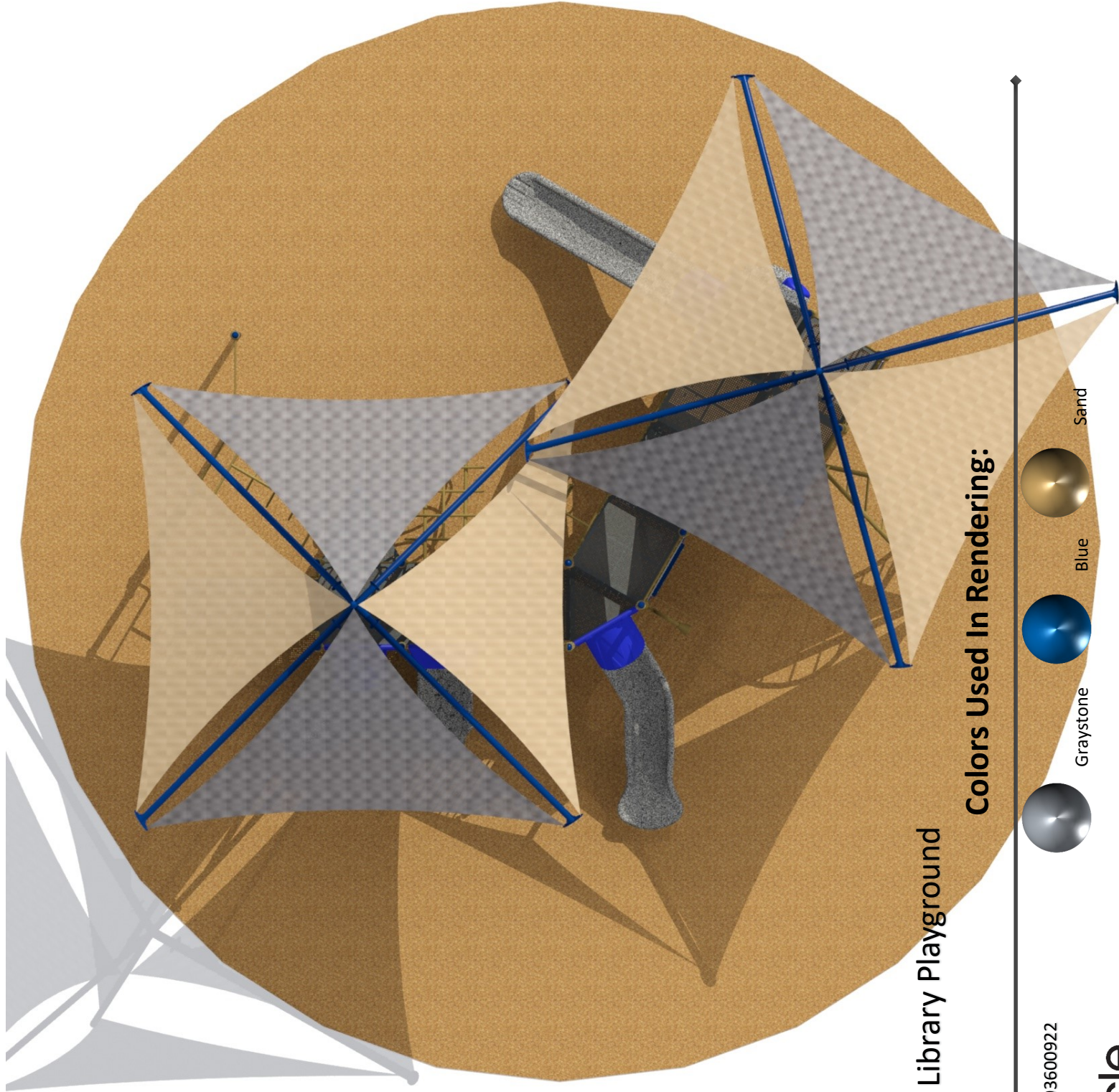
Project	Terms	Rep	FOB
Chino Valley Library-REV	Net 30	Monte	Factory

Item	Description	Qty	Rate	Total
Miracle	Custom Tots Choice Playsystem w/(2) 18'x18' Integrated PlayCover Fabric	1	36,629.60	36,629.60T
Freight	Sails	1		0.00
	Commercial Freight - Free Freight			
Fibar	Engineered Wood Fiber Safety Surfacing - 80 Cubic Yards	1	1,440.00	1,440.00T
Fibar	Fibarfelt - 1,750 Sq Ft	1	315.00	315.00T
Fibar	Fibarmats	3	150.00	450.00T
Freight	Commercial Freight - (1) Truckload	1	1,000.00	1,000.00
Installation	Install of Playsystem	1	11,721.47	11,721.47
Installation	Install of Fibar Safety Surfacing	1	715.00	715.00
Bond	Bond Fee	1	1,088.92	1,088.92
	EXCLUSIONS: Off Loading, Storage, Site Prep, Demo			
	PRICING BASED ON THE MOHAVE CONTRACT #14X-MCLE-0220			

All terms and conditions per Mohave Contract 14X-MCLE-0220

Subtotal	\$53,359.99
Sales Tax (5.6%)	\$2,174.74
Total	\$55,534.73

Sign: _____



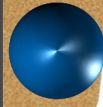
Chino Valley Library Playground

Chino Valley, AZ

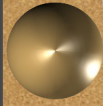
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Graystone



Blue

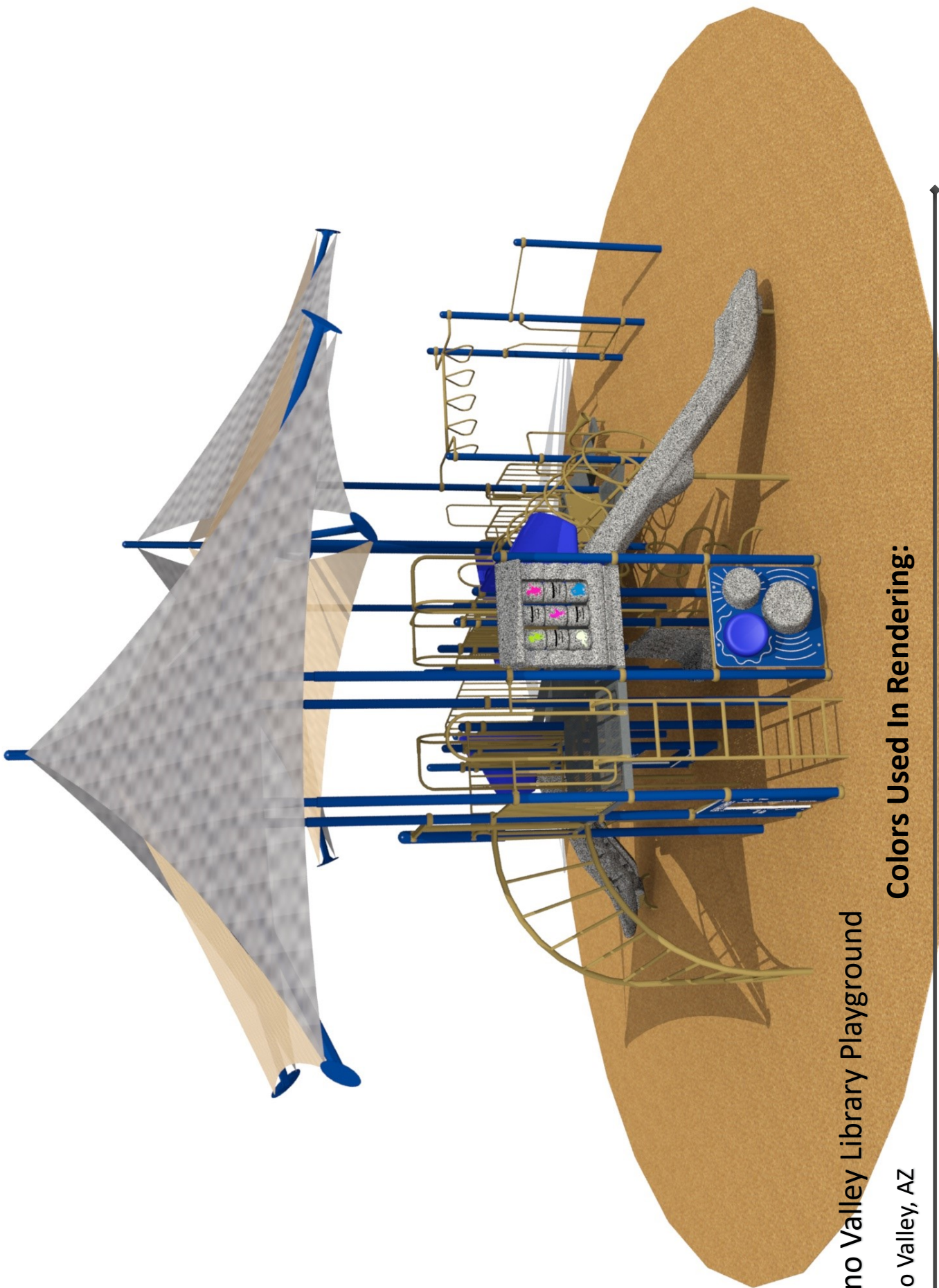


Sand

Drawing #R0001_43293600922



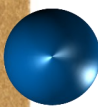
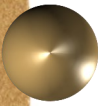
Miracle Playground Sales



Chino Valley Library Playground

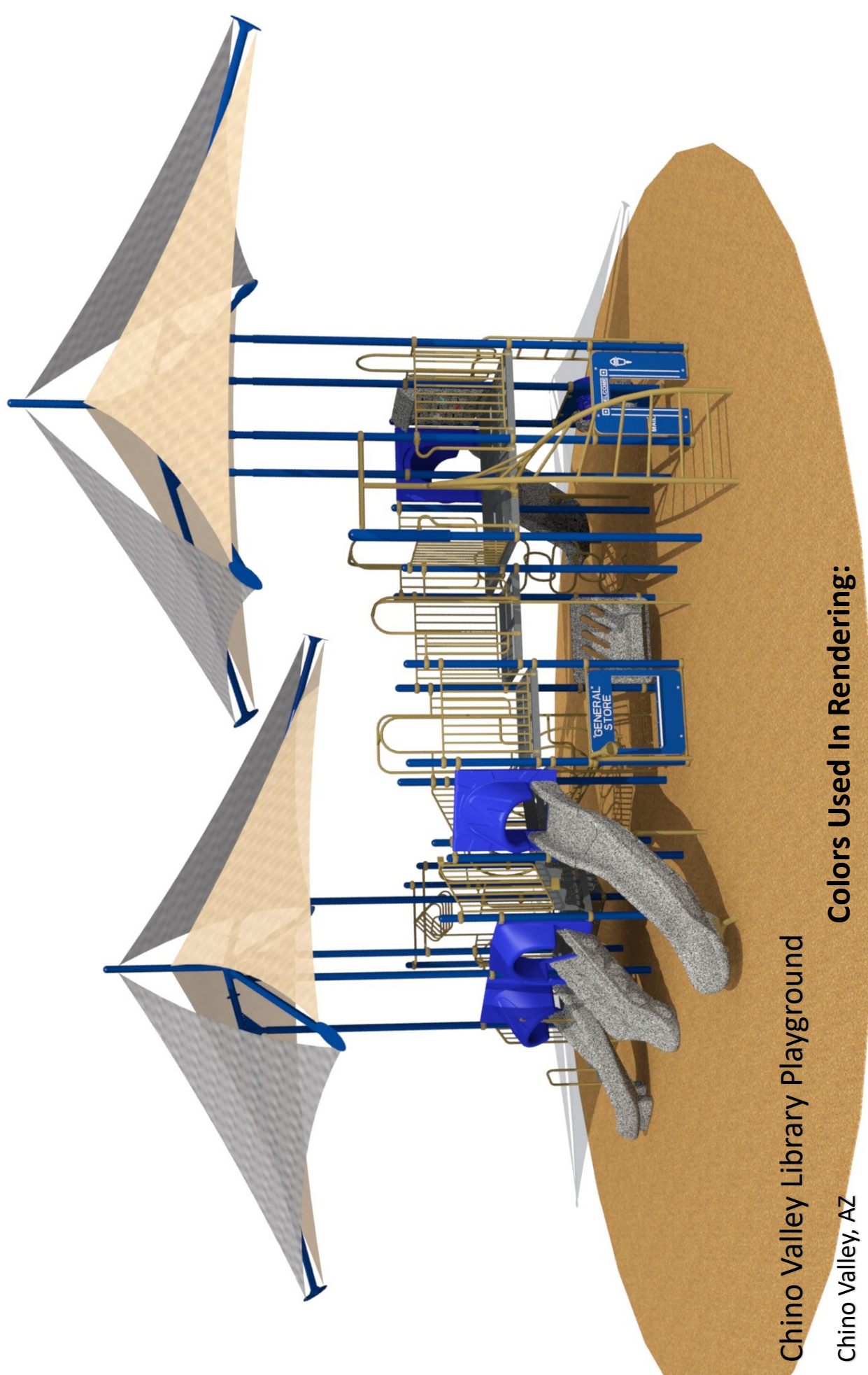
Chino Valley, AZ

Colors Used In Rendering:

-  Graystone
-  Blue
-  Sand

Drawing #R0001_43293600922





Chino Valley Library Playground

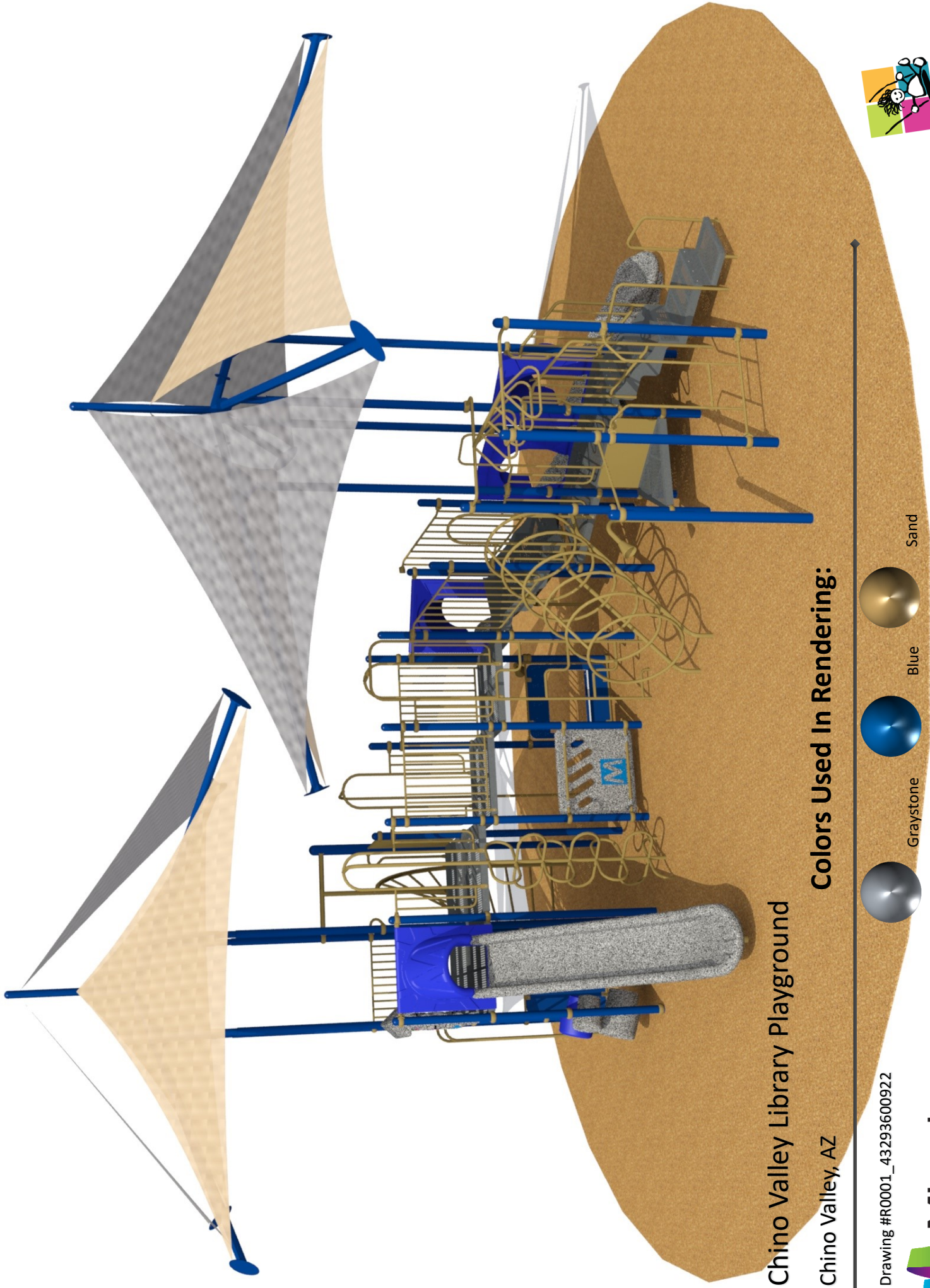
Chino Valley, AZ

Colors Used In Rendering:

- Graystone
- Blue
- Sand

Drawing #R0001_43293600922

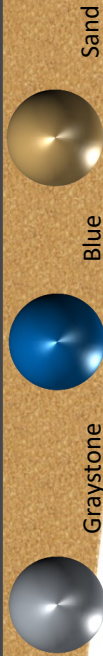




Chino Valley Library Playground

Chino Valley, AZ

Colors Used In Rendering:



Drawing #R0001_43293600922



Chino Valley Library Playground

Chino Valley, AZ

Colors Used In Rendering:

- Graystone
- Blue
- Sand

Drawing #R0001_43293600922



Miracle Playground Sales

EXHIBIT C
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MIRACLE RECREATION EQUIPMENT COMPANY

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Chino Valley (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 20____, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20____.

Principal

Seal

By: _____

Surety

Seal

By: _____

Agency of Record

EXHIBIT D
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MIRACLE RECREATION EQUIPMENT COMPANY

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Chino Valley (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, for the material, service or construction described as _____ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20____.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

**CONSTRUCTION SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ROYAL COVERS OF ARIZONA, INC.**

THIS CONSTRUCTION SERVICES AGREEMENT (this “Agreement”) is made as of October 9, 2018, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”) and Royal Covers of Arizona, Inc., an Arizona corporation (the “Contractor”).

RECITALS

A. The Town requested quotations from vendors for to supply and install a ramada (the “Equipment and Services”) for the Memory Park/Library expansion (the “Project”).

B. The Contractor responded to the request by submitting a proposal (the “Proposal”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, and the Town desires to enter into an Agreement with the Contractor for the Equipment and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until January 31, 2019, unless terminated as otherwise provided in this Agreement.

2. Scope of Work. Contractor shall provide the Equipment and Services as set forth in the Proposal.

3. Reference Standards. Intentionally omitted.

4. Inspection, Safety and Compliance. Contractor must inform itself fully of the conditions relating to the Services and the employment of labor thereon. Failure to do so will not relieve the Contractor of its obligation to furnish all material and labor necessary to carry out the provisions of this Agreement. Insofar as possible the Contractor, in carrying out its work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor. Contractor affirms that it (i) has inspected the jobsite, (ii) has thoroughly reviewed this Agreement and (iii) is not relying on any opinions or representations of Town.

5. Safety Plan. Contractor is responsible for all safety precautions and programs and shall perform the Work in accordance with a safety plan that is compliant with Occupational Safety and Health Administration (“OSHA”), American National Standards Institute and National

Institute for Occupational Safety and Health standards. Contractor shall provide all protection and necessary supervision to implement said Safety Plan. Contractor shall take all reasonable precautions for the safety of and provide reasonable protection to prevent damage, injury or loss to: (A) employees or others on the Project, (B) the work and materials and (C) other property at the Project or adjacent thereto. Contractor shall designate a responsible person whose duty shall be prevention of accidents.

6. Compensation. The Town shall pay Contractor an amount not to exceed \$9,997.00 for the Equipment and Services as set forth in the Proposal.

7. Payments. The Town shall pay Contractor an initial deposit of \$4,998.00 for the Equipment and Services upon execution of this Agreement and placement of the order. The balance of \$4,999.00 will be due upon completion of the Services.

8. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town.

9. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

10. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

11. Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Contractor.

12. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

13. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Contractor, its officers, employees, agents, or any tier of subcontractor in connection with Contractor’s work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

14. Insurance.

14.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's

responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Contractor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 14.

14.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy

shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work in any way related to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If Contractor employs anyone who is required by law to be covered by workers' compensation insurance, Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

14.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Town.

15. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.

16. Termination; Cancellation.

16.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

16.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

16.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

16.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a contractor to any other party of this Agreement with respect to the subject matter of this Agreement.

16.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

16.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

17. Performance Bond. Prior to issuance of the Notice to Proceed, the Contractor shall be required to furnish non-revocable security binding the Contractor to provide faithful performance of this Agreement in the amount of 100% of the total Agreement price payable to the Town. Performance security shall be in the form of a performance bond, certified check, cashier's check or irrevocable letter of credit. This security must be in the possession of the Town within seven days after execution of this Agreement by the Town. If the Contractor fails to execute and deliver the security document as required, the Contractor may be found in default and the Contract terminated by the Town. In case of default the Town reserves all rights. The performance bond shall be executed in the form attached hereto as Exhibit B, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have, at the time of submission of the Performance Bond, an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

18. Miscellaneous.

18.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors.

The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed scope of work as set forth in Section 2 above and in Exhibit A. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

18.2 Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future OSHA standards.

18.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

18.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will 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, this Agreement will promptly be physically amended to make such insertion or correction.

18.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

18.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

18.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

18.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this

Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Contractor.

18.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

18.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

18.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

18.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

18.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:	Town of Chino Valley 202 North State Route 89 Chino Valley, Arizona 86323 Attn: Town Manager
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With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

If to Contractor: Royal Covers of Arizona, Inc.
 948 East Impala Avenue
 Mesa, Arizona 85204
 Attn: Charles Bishop

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

18.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

18.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 18.17 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of the Contractor and its subcontractors' employees who perform any work or Services pursuant to this Agreement (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 18.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement

for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

18.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

18.18 Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

18.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among this Agreement, any amendments, the Proposal, or any Town-approved Purchase Order, the documents shall govern in the order listed herein.

18.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

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

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Contractor”

ROYAL COVERS OF ARIZONA, INC.,
an Arizona corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
CONSTRUCTION SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ROYAL COVERS OF ARIZONA, INC.

[Proposal]

See following page.

(Purchaser's Signature)

EXHIBIT B
TO
CONSTRUCTION SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ROYAL COVERS OF ARIZONA, INC.

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Chino Valley (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 20____, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20____.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

7.b.

Meeting Date: 10/09/2018
Contact Person: Spencer Guest, IT Specialist
 Phone: 928-636-2646 x-1215
Department: Community Services
Item Type: Action-Presentation
Estimated length of staff presentation: 10 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to approve the Databank IMX Statement of Work for the OnBase Implementation - Phase 1 of the Town's EDMS system.

RECOMMENDED ACTION:

Staff recommends Council approve the Databank IMX Statement of Work for the OnBase Implementation - Phase 1 of the Town's EDMS system.

SITUATION AND ANALYSIS:

During the August 14th, 2018 Council meeting, MIS staff and Databank IMX (Databank) presented and demonstrated an Enterprise Document Management System (EDMS). This proposed system is intended to serve a key role to help staff properly organize, retrieve and manage the large volume of information that is currently stored in paper files and the Town's server file shares. MIS staff now requests Council to consider for approval the Databank IMX Proposed Statement of Work for the OnBase Phase 1 Implementation. This document created by Databank details the Phase 1 project scope, deliverables, assumptions, professional services and cost estimates to deploy a working OnBase EDMS system for the Town. Databank is the selected vendor following an RFP process that was conducted beginning on February 10th, 2018 and closing on March 22nd, 2018 in accordance with the Town's procurement policy and the Technology Plan (See bid opening document Chino Valley EDMS Bid Opening 3-29-2018). After Databank was selected, MIS staff further requested they to develop a plan of implementation that would phase in the RFP proposed solution over several fiscal years. This was done to better align the proposed solution costs with the Town's financial revenues and to align the implementation work load demands with the available department staff time limitations. On August 8th, Databank conducted an onsite meeting with each department that was planned for the phase 1 implementation to gain an better understanding of the amount of time and resources necessary to migrate these departments into an OnBase system. Following these meetings, Databank was able to supply the Databank Statement of Work for review and approval (See Databank OnBase Chino Statement of Work). Additionally, the Town's legal representation and Databank came to an agreed upon Purchase and Services Agreement that is acceptable for both parties to move forward with the Phase 1 implementation (see Databank IMX Purchase & Services Agreement).

Fiscal Impact

Fiscal Impact?: \$110250.00

If Yes, Budget Code: 01-95-5578

Available: \$100000.00

Funding Source:

The procurement of an enterprise document management system was a planned expenditure within the 2018/2019 fiscal year. \$100,000 was budgeted upon a rough estimate for the total cost within current fiscal year which fell short of the actual proposed value that was provided by Databank during the RFP process (\$187,102.40) and with the Phase 1 Statement of Work (\$110,250.00). This shortfall may not pose a significant problem when the pricing breakdown is examined as it shows there is a contingency reserve of 20% built into the Statement of Work. This totals to a value of \$9,990 which nearly covers the the budgeted shortfall and would only be billed if there is a significant amount of change orders required to complete the implementation. In the event there is a need for the 20% contingency or additional requirements, the funds will need to be pulled from the MIS fiscal year budget, if available, or Town contingency funds. Maintenance costs for the 1st year included in the Statement of work are \$7,400 and are projected to increase by 3% in the subsequent year. A Phase II implementation is planned for the 2019/2020 fiscal year and a new Statement of Work will be created and brought before Council for review at that time.

Attachments

Bid Opening Document

PSA - DataBank IMX

Hyland Software EULA

Hyland Software - Addendum to EULA

Town of Chino Valley EDMS RFP Bid Opening March 29, 2018

Company Name (Submitter)	Date & Time Bid Received	Bid Amount (Main)	Optional Bid 1	Optional Bid 2	Comments
DocUnited Imaging	3/21/2018	\$206,945.00			
MCCI	3/28/2018	\$54,440.00			
Knovos	3/28/2018	\$223,100.00			
DataBank	3/28/2018	\$187,102.40			
ICM	3/29/2018	\$112,252.77	\$82,381.00		
Armedia	3/29/2018	\$102,820.59			
FutureNet Group Inc	3/29/2018	\$205,097.60	\$67,975.00		
FileHold Systems Inc	3/29/2018				No cost proposal submitted
AppVizo	3/29/2018	\$115,460.00			
ECS Imaging Inc	3/29/2018	\$71,510.00			

**PURCHASE AND SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
DATABANK IMX LLC**

THIS PURCHASE AND SERVICES AGREEMENT (this “Agreement”) is entered into as of October 9, 2018, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”) and DataBank IMX LLC, a Delaware limited liability company (the “Consultant”).

RECITALS

A. The Town issued a Request for Proposals, a copy of which is on file in the Town’s Finance Office, seeking proposals from vendors for an enterprise document management system (the “RFP”).

B. Consultant, an authorized reseller of Hyland Software, Inc., the Software Development Company (“SDC”), responded to the RFP by submitting a proposal (the “Proposal”), attached hereto as Exhibit A and incorporated herein by reference, for SDC’s OnBase Information Management System software modules (the “Software,” as further defined in Subsection 1.5 below).

C. The Town has licensed the Software from SDC pursuant to the terms of the OnBase End User License Agreement and any written amendments and modifications (the “EULA”).

D. The Town desires to enter into an Agreement with the Consultant to provide (i) implementation of Phase I of the Software, (ii) maintenance and technical support services for the Software and (iii) delivery and installation of SDC’s generally released upgrades and enhancements to the Software (collectively, the “Services”) as more particularly set forth in Section 3 below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Consultant hereby agree as follows:

1. Defined Terms.

1.1 “Documentation” means electronic on-line material, including user manuals, provided by SDC for the Software that relate to the functional, operational, or performance characteristics of the Software.

1.2 “Error” means any defect or condition inherent in the Software that causes the Software to fail to perform in accordance with the current Documentation provided by SDC.

1.3 “Holidays” means the days designated as holidays by the U.S. Government, as amended from time to time.

1.4 “Maintenance Services” means all professional services provided under this Agreement by Consultant assisting the Town in identifying bugs in the Software (as defined below) to be fixed by installing upgrades and enhancements to the Software and providing help-desk services. The Consultant will provide the Maintenance Services described in Subsection 15.4.

1.5 “Software” means (A) the current released version of OnBase Information Management System licensed by Town from SDC under the EULA, and (B) at any time after Consultant has delivered to Town a new version of the Software as an Upgrade and Enhancement under this Agreement, the released version of the Software last released prior to the current released version; provided, that the Software will not include any prior released version of the Software that has been superseded for more than two years (as determined from the date that SDC first announced publicly, through its web site or otherwise, the general release of the next later version of the Software) by any later released version of the Software.

1.6 “Support Services” means professional services provided by Consultant assisting in the resolution of the Town’s Errors in use of the Software, responding to the Town’s questions on the use of the Software, providing consulting services, helping Town augment its use of the system, by, for example, adding new document types, applications, or indexing capabilities, but will not include any alteration or modification of the Software.

1.7 “Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that SDC commercially releases to its end users during the term of this Agreement to correct deficiencies or enhance the capabilities of the Software; provided, however, that the foregoing will not include new, separate product offerings, new modules, re-platformed Software, or new functionality.

2. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until October 8, 2019, unless terminated as otherwise provided in this Agreement.

3. Statement of Work. Consultant shall provide the Services as set forth in the Statement of Work attached hereto as Exhibit B and incorporated herein by reference.

4. Compensation. The Town shall pay Consultant an amount not to exceed \$110,250.00 for the Services at the rates set forth in the Fee Proposal attached hereto as part of Exhibit B.

5. Payments. The Town shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

6. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town.

7. Information Technology.

7.1 Limited Access. If necessary for the fulfillment of this Agreement, the Town may provide Consultant with non-exclusive, limited access to the Town's information technology infrastructure. Consultant understands and agrees to abide by all Town policies, standards, regulations and restrictions regarding access and usage of Town's information and communication technology resources. Consultant shall enforce all such policies, standards, regulations and restrictions with all Consultant's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorized only such access as may be necessary for the purpose of fulfilling the requirements of this Agreement. Consultant's employees, agents and subcontractors must receive prior, written approval from Town before being granted access to the Town's information and communication technology resources and data. The Town, in its sole discretion, shall determine accessibility and limitations thereto. Consultant agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. Notwithstanding the provisions in Section 14.2, a violation of this Section may result in immediate termination of this Agreement without notice.

7.2 Data Confidentiality. All Town data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to Consultant in connection with this Agreement, are confidential, proprietary information owned by the Town. Except as specifically provided in this Agreement, the Consultant shall not, without the prior, written consent of the Town Manager or authorized designee, (A) disclose data generated in the performance of the Services to any third party or (B) use Town data and information.

7.3 Data Security. Personal identifying information, financial account information, or restricted Town information, whether in electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When Town information, regardless of its format, is no longer required by the Consultant to execute the work contracted by the Town, the information must be redacted or destroyed through appropriate and secure methods to ensure the information cannot be viewed, accessed or reconstructed.

7.4 Compromised Security. In the event that data collected or obtained by the Consultant in connection with this Agreement is believed to have been compromised, Consultant

shall immediately notify the Town Manager, or authorized Town designee. Consultant agrees to reimburse the Town for any costs incurred by the Town to investigate potential breaches of this data by the Consultant and, where applicable, the cost of notifying and/or assisting individuals who may be impacted by the breach.

7.5 Cessation of Operation or Support. If Consultant ceases to operate, ends support of, or otherwise divests its interest in the software and materials for which it is contracted by the Town and does not assign the obligation of the Services at reasonable cost as set forth in this Agreement, the Consultant shall provide the Town a copy of current source code. The Town agrees it shall only use the source code to support its use of the software.

7.6 Disengagement. In the event the contract is terminated by either party, Consultant agrees to confer back to the Town all of its data, in usable and normalized format, within 30 days of notice of contract termination. There shall be no charge for the return of Town data to the Town.

7.7 Survival. The obligations of Consultant under this Section 7 shall survive the termination of this Agreement.

8. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire Town residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications. Additionally, the Town shall have the right to request that the Consultant personnel and/or subcontractors be removed if, in the Town's sole discretion, such personnel or subcontractor(s) are detrimental to the delivery of the Services. Upon receipt of such request, the Consultant shall remove such personnel or subcontractor(s) unless the Consultant can provide the Town with sufficient documentation to prove it is commercially impractical to replace the personnel or subcontractor(s) with similar qualifications. The Town's approval of substituted personnel or subcontractor(s) shall not be unreasonably withheld.

9. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the Town.

10. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The Town has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Consultant.

11. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

12. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

13. Insurance.

13.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Consultant. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the

declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Consultant's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Consultant shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 13.

13.2 Required Insurance Coverage.

A. Commercial General Liability. Consultant shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant’s owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If Consultant employs anyone who is required by law to be covered by workers' compensation insurance, Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

13.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Town.

14. Termination; Cancellation.

14.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Consultant of written notice by the Town. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

14.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

14.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

14.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

14.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

14.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Consultant hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

14.7 Termination of the EULA. Upon termination of the EULA, this Agreement will terminate automatically, without further action by either party.

15. Maintenance and Support Services.

15.1 Generally. Consultant will promptly after receipt of proper written or electronic mail notice from the Town, in accordance with Subsection 17.3 of this Agreement and Consultant's current Error reporting procedures: (A) use its best efforts to correct any properly reported Error(s) in the Software confirmed by SDC in the exercise of its commercially reasonable judgment; and (B) upon request of the Town, provide technical support, assistance and advice related to the operation and use of the Software by the Town. Consultant will report the suspected Error to SDC for confirmation and will attempt to correct confirmed Errors.

15.2 Availability of Maintenance Services and Support Services. Consultant will provide Maintenance Services and Support Services during the hours of 8:00 a.m. to 8:00 p.m., Eastern Standard Time, Monday through Friday, excluding Holidays ("Normal Hours"). Town understands that Consultant will first attempt to resolve any problem by telephone. Consultant will next attempt to resolve the problem remotely. Consultant will only be required to provide on-site Maintenance Services and/or Support Services in accordance with Subsections

15.2 and 15.5 after telephone and remote support have not resolved the problem. If the Town experiences a Level I Error (as defined below) situation outside of Normal Hours, the Town may contact Consultant 24 hours per day, seven days per week, by calling Consultant's regular telephone Maintenance Services number (866-590-5545) and using Consultant's after-hours paging system. Consultant reserves the right to notify the Town that it is making unauthorized (an Error that cannot be categorized as a Level I Error) use of after-hours Maintenance Services and to terminate the provision of after-hours Maintenance Services. Town will be informed by Consultant or SDC at the time of a call if that call is considered an unauthorized call (and will be informed of the reasons supporting such determination) and Town will have the opportunity to request a review of the determination or terminate the call and delay Maintenance Services until Normal Hours on the next business day. Support Services will only be available during Normal Hours unless otherwise agreed to in writing.

15.3 Consultant and SDC Access. Town acknowledges and agrees that Consultant and SDC require on-line access to the Software installed on Town's systems in order for Consultant and SDC to provide Maintenance and Support Services. To provide the necessary access, Town will install, secure and maintain, at Town's sole cost and expense, a virtual private network (VPN) connection, or functional equivalent similar to GoToMeeting or GoToAssist, to facilitate Consultant's on-line Maintenance Services and/or Support Services.

15.4 Response to Failures, Access Problems and Errors. The Town providing Consultant with a written Error Report is a prerequisite to Consultant responding to system failures, access problems, performance failures and Errors. The Error Report must include a written or electronic mail explanation of the software routines employed when the problem occurred, and any available documentation of the Error, including, but not limited to, screen prints of all system errors, error messages, time of error and any other information Consultant reasonably requires. Promptly after Consultant receives the Error Report, Consultant will assign an appropriate level and response time to the situation, and Consultant personnel to assist the Town in solving the problem. The Town should refer to the Customer Support Guide for additional details on receiving assistance from the Consultant. The levels of problems, response times, and descriptions of the response for the levels of problems are as follows:

A. Urgent/Level I.

(1) Definition. Complete system failure and/or critical business function failure.

(2) Response. Consultant will (i) respond within two working hours after the later of receipt of the Error Report and agreement that this Level of response is needed and (ii) assign resources within four working hours with Consultant Professional Services Staff ("PSS") involvement until resolution. If hardware fails, Consultant will provide PSS support within two working hours after the Town's servers become operational.

B. High/Level II.

1. Definition. No system failure, but Town-users are unable to access or execute critical system functions.

2. Response. Consultant PSS will (i) respond to the Town within four working hours of receipt of the Error Report and agreement to this Level and (ii) use best efforts to restore access within three working days.

C. Normal/Level III.

1. Definition. Application not performing per documentation, but Town user can perform basic job functions with alternate procedures.

2. Response. Consultant will respond within six hours of Consultant's receipt of the Error Report. Consultant will provide fixes within a reasonable time and Town will be informed when fixes will be provided.

D. Low/Level IV.

1. Definition. Application performing per documentation, but Town has question to change basic job functions or seek guidance on alternate procedures.

2. Response. Consultant will respond within one working day of Consultant's receipt of the Error Report. Consultant will provide fixes within a reasonable time and Town will be informed when fixes will be provided.

15.5 On-Site Services. Upon Town providing remote access and a reasonable written request following Consultant's reasonable efforts to resolve the problems by telephone or remotely, and submission of an Error Report, Consultant will provide on-site Maintenance Services at Town's facilities in connection with the correction of any Error(s) involving a critical function of the Software that is not functioning in a production environment. On-site Maintenance Services and/or Support Services will commence as soon as feasible, after Consultant receives the Error Report, but in no event more than two business days after Consultant's receipt of the Error Report. The Town may purchase additional on-site Support Service, if desired.

15.6 Improper Maintenance or Use. Consultant is not responsible or obligated to provide Maintenance Services and/or Support Services or Upgrades and Enhancements under this Agreement if: (A) the Software has been altered, revised, changed, enhanced or modified in any manner that was not authorized in writing in advance by SDC; (B) the Error or problems have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third-party software (other than third-party software bundled with the Software by SDC), hardware or any system or networking utilized by Town; (C) the Software or related software or systems have been subjected to abuse, misuse,

improper handling, accident or neglect; or (D) any party other than Consultant or SDC has provided any services in the nature of Maintenance Services and/or Support Services to Town with respect to the Software.

15.7 Hardware. The service maintenance agreement for any hardware that is used in accordance with the Software, and acquired from Consultant, will be covered in a separate addendum, if applicable.

16. Upgrades and Enhancements.

16.1 Obligation to Provide Upgrades and Enhancements. In accordance with SDC's then-current policies, Consultant will timely provide to the Town all Upgrades and Enhancements to the Software released by SDC during the term of this Agreement. Town acknowledges and agrees that SDC has the right, at any time, to change: (A) the specifications and operating characteristics of the Software so long as the basic function for which the Software was purchased by the Town is maintained and (B) SDC's policies respecting Upgrades and Enhancements and their release to end users. Any Upgrades and Enhancements to the Software and Documentation are proprietary to SDC, are the sole and exclusive property of SDC, and are subject to all of the restrictions, limitations and protections of the EULA. All rights to patents, copyrights, trademarks, other intellectual property rights, applications for those rights and trade secrets in the Software and Documentation and any Upgrades and Enhancements are the exclusive property of SDC.

16.2 Completion of Upgrade. If contracted by the Town to do so under an approved Statement of Work, Consultant will install upgrades provided to the Town according to the current established change management procedures currently in effect by the Town. Consultant's obligation to complete the Upgrade ends after Consultant notifies Town in writing or electronic mail that it has completed the Upgrade, and the Software and Upgrade operate without any Errors for 24 hours after that notification is given. This written notice will require acceptance by the Town by signed form or electronic mail. Consultant's services including the correction of Errors occurring after its obligation to complete the Upgrade has ended, will be part of its Maintenance and Support Services described in Section 15.

17. Town's Software Responsibilities.

17.1 Operation of the Software. The Town acknowledges and agrees that it is solely responsible for the day-to-day operation, supervision, management and control of the Software, including, but not limited to, providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, the Town is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss if hardware or software malfunctions. Consultant and SDC shall have no responsibility or liability for the Town's selection or use of the Software or any hardware, third-party software or systems.

17.2 Town's Implementation of Error Corrections and Upgrades and Enhancements. To maintain the integrity and proper operation of the Software, the Town agrees

to implement all Error corrections and Upgrades and Enhancements, in the manner instructed by Consultant. The Town's failure to properly implement any Error corrections or Upgrades and Enhancements relieves Consultant of any responsibility or liability for any failure or malfunction of the Software related to the Town's error, as modified by a subsequent Error correction or Upgrade and Enhancement. Subject to cancellation or termination pursuant to Section 14 above, in no event will the Town be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.

17.3 Notice and Documentation of Errors. The Town will provide Consultant with written or electronic mail notices of any Errors containing the information to be included in the Error Report described in Subsection 15.4 and any other information required by Consultant's policy for Error Reports in effect at the time the Town discovers or learns of an Error.

17.4 Access to Premises and Systems. During the Town's normal business hours (or after hours if agreed to in writing before-hand by both parties), the Town will allow Consultant, and if Consultant retains SDC to assist, SDC reasonable access to and use of Town's premises, computer hardware, peripherals, Software and other software as may be necessary to diagnose and correct any Errors or to otherwise provide Maintenance Services and/or Support Services. Town will provide that access and use at no cost or charge to Consultant or SDC.

17.5 Copyright and Confidentiality. The Town agrees that any source code for software created and provided to Town by Consultant is the property of Consultant. Consultant retains all rights to copyright and any other intellectual property rights with respect to the Software. The Town further agrees to maintain the confidentiality and not to disclose any of the source code, object code or documentation of the Software to anyone and not to use any of the Software for any purpose other than operating the Software provided under the EULA. Upon termination of this Agreement, the EULA, or any OnBase Software Maintenance Agreement, the Town will retain ownership and full use rights of the then purchased and licensed Software without rights to copy, distribute, or modify the source code, object code or documentation to the Software.

18. Limited Warranty.

18.1 Limited Warranty of Services. Consultant warrants that the Maintenance Services and Support Services it provides will be performed in a good and workmanlike manner and consistent with industry standards. In order to assert any claim that any Maintenance Services and/or Support Services fail to conform to this limited warranty, Town must notify Consultant in writing of its claim within **90 days** after the date the alleged non-conforming Services are completed. If, after timely notice from Town, the Maintenance Services and/or Support Services in question are determined not to conform to this limited warranty, Consultant's sole obligation, and Town's sole remedy, is for Consultant to use commercially reasonable efforts to re-perform the nonconforming Services in an attempt to correct the nonconformity. If Consultant is unable to correct the nonconformity after a reasonable period of time, Town's sole and exclusive remedy is termination of this Agreement in accordance with Subsection 14.2. This warranty specifically excludes non-performance issues caused as a result

of any circumstances described in Subsection 15.6, incorrect data or incorrect procedures used or provided by Town or a third party or failure of Town to perform and fulfill its obligations under this Agreement or the EULA.

18.2 No Warranty of Upgrades and Enhancements. The EULA governs any limited warranty or disclaimers relating to the Software itself and Upgrades and Enhancements of the Software provided to the Town under this Agreement; no warranty is given under this Agreement with respect to Upgrades and Enhancements. Consultant's warranties in this Agreement relate solely to Services provided under this Agreement and the warranties of the Software or the Upgrades and Enhancements, if any, are warranties of SDC either in the EULA or in another writing expressly authorized by SDC.

18.3 Disclaimer of Warranties. Except as expressly set forth in Subsection 18.1, Consultant makes no warranties or representations regarding any Maintenance Services or Support Services, any Software or any Upgrades and Enhancements provided under this Agreement. Consultant disclaims and excludes any and all other express, implied and statutory warranties, including, without limitation, warranties of good title, warranties against infringement, implied warranties of merchantability and fitness for a particular purpose, and warranties that may arise or be deemed to arise from any course of performance, course of dealing or usage of trade. Consultant does not warrant that any Maintenance Services and Support Services, Software or Upgrades and Enhancements provided will satisfy the Town's requirements or are without defect or error, or that the operation of any Software or Upgrades and Enhancements will be uninterrupted. Consultant does not assume any liability whatsoever with respect to any third party hardware, firmware, software or services.

19. Limitations of Liability. Consultant and SDC will not be liable for any indirect, incidental, special, or consequential damages, including, but not limited to, any lost profits, lost savings, business interruption damages or expenses, the costs of substitute software or services, losses resulting from erasure, damage, destruction or other loss of files, data or programs or the cost of recovering that information, or other pecuniary loss, even if Consultant or SDC has been advised of the possibilities of such damages or losses.

20. Miscellaneous.

20.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed Statement of Work as set forth in Section 3 above. Consultant is neither prohibited from

entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Consultant do not intend to nor will they combine business operations under this Agreement.

20.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

20.3 Laws and Regulations. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

20.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Consultant.

20.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will 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, this Agreement will promptly be physically amended to make such insertion or correction.

20.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

20.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

20.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

20.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

20.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

20.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

20.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

20.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Consultant any amounts Consultant owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Consultant any amounts Consultant owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

20.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:	Town of Chino Valley 202 North State Route 89 Chino Valley, Arizona 86323 Attn: Town Manager
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With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

If to Consultant: DataBank IMX LLC
 620 Freedom Business Center, Suite 120
 King of Prussia, Pennsylvania 19406
 Attn: CFO

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

20.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the Town. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

20.16 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 20.17 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 20.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said

Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

20.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

20.18 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

20.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Statement of Work, any Town-approved Purchase Order, the Fee Proposal, the RFP and the Consultant's Proposal, the documents shall govern in the order listed herein.

20.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

20.21 Force Majeure. No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) is a default or breach to the extent that the failure to perform, delay or default arises out of a cause, existing or future, beyond the control of the party ("Force Majeure"). A Force Majeure includes, but is not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; acts of terrorism; or the act, negligence or default of the other party, but only to the extent the delay does not result from the negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon Force Majeure to excuse failure, default or delay in performance will, when the cause arises, give other party written or electronic mail notice of the facts that constitute Force Majeure; and, when the Force Majeure ceases to exist, give prompt notice of that cessation to the other party. This Subsection 20.21 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Subsection 20.21 for longer than 90 calendar days, the other party, by written

notice given during the postponement or extension, and at least 30 calendar days prior to the effective date of termination, may terminate this Agreement.

20.22 Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the Town, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The Town assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The Town shall not be responsible for any disputes arising out of transactions made by others.

[SIGNATURES ON FOLLOWING PAGES]

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

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Consultant”

DATABANK IMX LLC
a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
PURCHASE AND SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
DATABANK IMX LLC

[Consultant's Proposal]

See following pages.



***Response to Request for Proposal
Enterprise Content Management System***

For:



Prepared for:

***Spencer Guest
IT Manager
Town of Chino Valley, AZ
202 N. State Road 89
Chino Valley, AZ 86323
sguest@chinoaz.net***

Presented By:

***Tracy Flores
Account Manager
DataBank IMX
Direct 602-845-1646
tflores@atabankimx.com***

3/26/18

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PROPOSAL SUMMARY

Overview

OnBase is a single enterprise information platform for managing content, processes and cases. OnBase has transformed thousands of organizations worldwide by empowering them to become more agile, efficient and effective.

OnBase provides enterprise content management (ECM), case management, business process management (BPM), records management and capture all on a single database, code base and content repository. Cloud-based file sharing, also called Enterprise file sync and share (EFSS) for the OnBase platform is available with our complementary offering, ShareBase.

OnBase is a single product, not a brand representing a large portfolio of acquired products. By combining all of these capabilities on a single platform, OnBase serves as a low-code rapid application development platform, which can be utilized to create content-enabled solutions across your entire enterprise.

OnBase meets your IT needs, long into the future because it is:

- **Configurable without code** – OnBase is point-and-click configurable, allowing you to use checkboxes, radio buttons and drop-down menus to quickly configure and easily change solutions. That means no expensive, time-consuming and difficult-to-maintain coding or scripting.
- **Scalable across your organization** – OnBase scales as requirements evolve, so you will never outgrow your OnBase system. Start in one department and grow your solution over time as needs and requirements change. Maintain speed and performance, even as you continue to expand and enhance your solution.
- **Easily upgradable** - With OnBase, all your solution components are upgraded together, eliminating the challenges of upgrading multiple custom-coded or point solutions. Take advantage of incremental parallel upgrades, minimizing downtime by allowing more than one OnBase version to run simultaneously.

Workflow

OnBase Workflow is a rules-based electronic document routing system that enables users to process work more efficiently, faster, and more accurately than with traditional paper processing. OnBase Workflow is beneficial whenever successive points of input or action are required in order to complete a task, process, or procedure. From processing applications to approving expense reports to managing remittance processing, Workflow streamlines collaboration and accelerates the completion of critical business tasks. Additionally, OnBase Workflow can easily integrate with and provide the backbone to e-commerce solutions, as well as be tied to organizations' core ERP and CRM systems.

With OnBase Workflow, users or integrators define and configure document states, rules, actions, and Life Cycles with a graphical Windows interface. Upon configuration, Workflow instantly routes documents through the business process as each increment of user or system work is completed. OnBase Workflow also supports advanced features such as alternate routing logic, automatic criteria calculation, rendezvous, simultaneous notification, load balancing, reporting, Ad Hoc Workflow, Visual Basic scripting, and API functionality for integration with core legacy or ERP/CRM systems.

When integrated with OnBase Web Server or Unity Server, the benefits of OnBase Workflow can be made available via the Internet to users throughout the company, regardless of their location.

Workflow, which is entirely point-and-click configurable, has been designed to allow for quick implementation. Much, if not all, of the programming that is required by traditional workflow systems has been eliminated. Workflow configuration consists of two central windows: the Tree View configuration window and the Graphical View configuration window.

The intuitive design of the Tree View configuration window provides a workflow designer with the tools to define the work (e.g., system, user, or timer) to be accomplished at each queue and define the rules and actions that determine how documents will be routed. Simple right-click mouse functions and easy to understand configuration windows give non-programmers an unprecedented ability to design and deploy sophisticated workflow solutions.

The Graphical View configuration window allows the designer to determine how the actual flow of a Life Cycle will appear and how documents will be transitioned through the Life Cycle. Through the use of a configuration toolbar and grid map, Workflow Life Cycles are designed in minutes. Upon the creation of the Life Cycle, the graphic layout and the transitions, a basic workflow has easily been established.

Once the Workflow layout and transitions have been defined, the designer completes the Life Cycle queue attributes by returning to the Tree View configuration window. The designer can choose from a large pre-defined list of rules and actions, or custom define rules or actions, utilizing Visual Basic scripting, through OnBase Workflow.

Users enter Workflow by selecting the Workflow button on the OnBase client toolbar or by selecting the menu option "Workflow Inbox." In a normal user environment, the user will see only the queues to which they are assigned. The administrator can select to hide or show a disabled icon for those queues to which a user does not have access.

In order for a document to enter a Workflow process, its document type must be associated with a specific Life Cycle. A document type can be configured to enter a lifecycle at a specific queue and automatically initiate Workflow. Documents are brought into a Workflow Life Cycle in all of the same ways documents can currently enter OnBase: COLD, DIP, Imaging, etc. Selecting a document from the OnBase Document Retrieval window and selecting the "Execute Workflow" option will manually start a Workflow Life Cycle. OnBase can also initiate Workflow from electronic forms, Internet forms and email messages.

Once in Workflow, users see a list of documents that are waiting in their queue. A task bar displays the user options for that queue. The user, upon selecting a document, can "Begin User Work", select a task to perform from the task bar, or route the document to another user or queue. The "Begin User Work" option prompts some type of user interaction, such as a question for the user to answer or series of tasks that the user should perform. When the user completes all user work and tasks, the document continues through Workflow and the user proceeds to the next document. When a document is at the end of a Life Cycle, there are options for eliminating, and archiving the document.

Typically, queues are shared by groups of individuals. Many employees can share the same queue, but they would only see the files assigned to them. To the user, it appears as if they are the only one using the queue. Queues can also be configured without any user work. These are called system or server-side queues. They handle background processes such as ticklers, timers, and other automated data processing functions.

CORE FEATURES:

- Ensures that documents are routed in a standard, controlled, and prompt manner.
- Accommodates exceptions to the configured model by assigning specific users with rights to add or exempt stages on an ad-hoc basis.
- Forwards documents without delay to each successive phase.
- Automatically distributes documents to specific work groups.
- Allows documents to be prioritized in each queue. If there is no priority assigned, the documents are sorted by the date and time they enter the Life Cycle.
- Monitors and measures the time it takes to complete a process.
- Audit queues allow periodic review for quality assurance.
- Supports Internet access for users outside of the immediate office environment.
- Processes are easily added or adjusted at the document, process, group, or enterprise level by specified users or administrators.
- Point-and-click configuration enables customization of both the routing and the user interface without programming.
- Integrates seamlessly with other OnBase modules and incorporates powerful cross-referencing to COLD, image or application documents.
- Integrates easily to other legacy systems utilizing Visual Basic scripting and robust API calls.

Collaboration

The OnBase Collaboration module provides a common workspace for people to share documents, ideas, and conversation. Built within the OnBase ECM system, the Collaboration module allows users to share selected OnBase documents and data and view multiple threaded conversation strings pertaining to those documents and objects. OnBase Collaboration was built to overcome geographical, timing, and workspace barriers to allow groups to work on projects, approve documents, and complete business deliverables.

OnBase Collaboration offers the following benefits:

- Provides a standardized method to manage and store document-level and other discussions
- Increases speed and efficiency of communications required for group decision making
- Reduces dependency on individual communication tools (such as e-mail, voicemail, fax, etc.) commonly used to manage group discussions and business issue resolutions
- Captures and archives a traceable history of group discussions and process issue resolutions
- Minimizes common barriers to communication, such as different geographical locations and time zones

OnBase Collaboration allows users to create workspaces and assign other users permissions to access those workspaces. Users can be given rights to view documents, WorkView | Case Manager (data) objects, and discussion threads and to manage other users and create or reply to written discussion threads within a workspace. Rights to add items to the workspace or to remove items from the workspace can also be determined at the user level. Accessible through the OnBase client or web client, users can interact with items in the workspace as their security settings permit. Users can even be notified via e-mail when they are invited to a workspace, or when new threads, thread replies, or documents are posted within a Collaboration workspace.

The OnBase Collaboration module provides a common workspace for people to share documents, ideas, and conversations. Built within the OnBase enterprise content management system, the Collaboration module allows users to share selected OnBase documents and WorkView | Case Manager (data) objects and view multiple threaded conversation strings pertaining to those documents and objects. When creating a new Workspace, users have the ability to invite a selected set of users to the Workspace. Users can belong to any number of Workspaces based on permissions.

Agenda Management

Paperless Agenda and Meeting Minutes

The Agenda Management module enables government organizations to effectively manage a variety of meeting types by automating the process of creating meetings and meeting documents, gathering votes and minutes during the meeting, and publishing meeting information to your website.

In OnBase Agenda, staff can create agenda items, upload related documents and route items for review through workflows. Meeting documents and supporting materials can be compiled and packaged for easy distribution to stakeholders, council members, and others.

OnBase Minutes streamlines the meeting process. It provides a means to record motions, votes, minutes and other facets of the meeting. In addition, agenda items can be added, removed, edited and re-arranged as changes occur during the meeting.

OnBase Agenda Online is a customizable web portal that allows the publication of meeting documents to your website with a single click, making information available to constituents and shareholders. In conjunction, agenda item supporting material can be easily selected for publication to the website.

After the meeting, the OnBase Agenda Management Suite continues to assist in the finalization of the meeting process, such as the ability to add post-meeting documents to agenda items and completion of minutes for publication. This comprehensive Agenda Management solution is designed to streamline your processes and assist you throughout your entire meeting process.

Solution Benefits

- Automates and streamlines agenda creation and distribution, reducing manual tasks and eliminating costly paper processes
- Ensures that the most current versions of documents are included in meeting packets
- Supports collaboration among staff by allowing users from multiple locations to simultaneously participate in the agenda planning process
- Reduces staff time required to assemble meeting packets, creating time for higher-value tasks
- Increases transparency by offering a comprehensive view of the process and the status of individual agenda items

Key Features

- Automatically creates, assembles, updates and distributes meeting packets
- Automates the addition of ordinance and resolution numbers, page numbers and placeholder pages
- Electronic distribution eliminates paper packets, increasing ROI and conserving budgeted funds for higher-value projects
- Offers instant access to agenda updates, changes and ad hoc submissions, enabling staff to stay on top of requests
- Captures attendance, motions and votes, and automatically routes items for follow-up after a meeting occur

Public and Private Web Portal

External Access via the External Access Client:

Above and beyond our standard Web Client offering is the External Access Client (EAC). The EAC provides secure, web-based access for external users. It is a complete, self-service portal solution that is deployed via a standard OnBase installer, which helps in the ease of implementation. The EAC leverages inherent functionality available via the OnBase Web Server which provides the ability to easily configure portal layouts, tailored for a specific need. This is all accomplished via a point-and-click interface. No custom coding or software programming experience required. Some examples of real-world applications where the EAC fits nicely would be, Human Resources (employee onboarding), Accounts Payable (Vendor Invoicing or Dispute Management), Insurance (Policy Services, Claim Services), etc. Virtually anywhere where there is a need for external user access into any relevant area of OnBase (whether standard document access, Workflow access, electronic forms submission, uploading documents), the EAC can accommodate.

Benefits: Documents are secured, accessible anytime, anywhere; allows full control of document, including tracking the history. Implementation is simple and streamlined. Being this is a complete self-serve portal, user account creation occurs automatically during user registration. No need to manually create/manage user accounts. No custom coding or API programming required to implement this solution. Given the EAC licensing model, it easily scales to external user growth. Since the EAC is installed via an OnBase installer, upgrading is not an issue. It's fully tested during our standard version release testing cycle, which guarantees it will be future proof.

Integrations

Hyland Software provides several methods to allow organizations to extend existing OnBase functionality, as well as create custom applications. OnBase offers a universal tool for integrating business applications with the OnBase system. Application Enabler allows OnBase to enable virtually any business application for document retrieval and document management functionality without programming. Application Enabler takes advantage of programming standards to interrogate and use the information from third-party application clients, sometimes referred to as a “screen scraping” methodology. The applications can be based on almost any platform, including Windows, Java, Mainframe / UNIX, and Web / HTML. Because Application Enabler offers multiple configuration options for integration, it is not limited by font, screen size, screen resolution, or other factors that cause some “screen scraping” integrations to fail. Hyland Software welcomes the opportunity to prove this technology with your business application(s) in your environment.

Another option is the OnBase Enterprise Integration Server (EIS). EIS provides bi-directional flow of data from line-of-business systems to OnBase without custom programming. It reduces data entry errors, minimizes time spent on data entry, and provides OnBase real-time access to line-of-business data directly. With the included visual mapping tools, EIS can provide implementers and administrators the ability to deploy solutions faster, ease administrative tasks, and reduce system-to-system data mapping by handling data formatting, manipulation, data joins, and repeating line items. Standard out-of-the-box tasks include archiving documents, getting document information, updating document metadata, updating document keysets, and creating electronic forms.

The standard scripting language for extending OnBase is Visual Basic script. Visual Basic script code can be called from several different points within the software including directly from active documents, from hooks built into several process points such as indexing or keyword validation, and from any step in a Workflow process. The OnBase Workflow module can also call out to a custom DLL or SOAP based Web Service at any point in a Workflow process.

In addition, OnBase has a complete set of API level libraries available in COM/.NET, Java, and SOAP/Web Services that allow programmers to leverage OnBase functionality from custom-built applications. These technologies allow OnBase to be tightly integrated with business applications that allow these types of integrations that meet specific requirements of a business. If this is a desired method, please contact Hyland Software to further discuss the specific requirements and the available methods to fulfill them.

STATEMENT OF QUALIFICATION AND EXPERIENCE

DataBank was founded in 1991 by Chuck Bauer who remains our CEO to today. In September of 2005, with assets of an additional acquisition, we became DataBank IMX. With the acquisitions and partnerships through our history prior to 1991, there are DataBank IMX locations that have been providing services since the 1960's. As of August 1, 2017, DataBank is a subsidiary of Kyocera Document Group.

Office locations that will be serving the Town of Chino Valley:

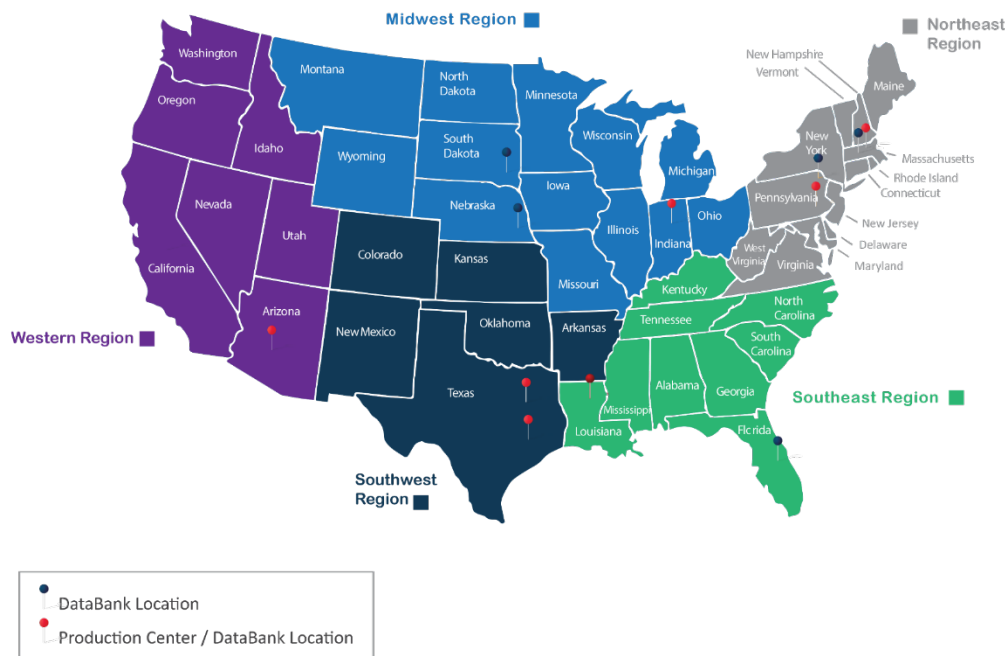
DataBank – Pheonix, AZ:

3520 N 16th St.
Phoenix, AZ 85016

DataBank Corporate Headquarters:

620 Freedom Business Center, Suite 120
King of Prussia, PA. 19406

National Coverage



Please refer to this link to see a list of all DataBank locations in the US:

<http://www.databankimx.com/about-us/locations/>

Databank IMX is a full service document management company. DataBank has been in business at its principal address since 1991. Databank IMX provides outsourced digital document conversion services and ECM system deployments for organizations that want to improve their document imaging and information management processes. Our ECM deployments include both premise-based as well as hosted deployments of OnBase and Digitech document management software.

By integrating information and document management, forms processing, conversion, records management, email and fax systems, we have helped thousands of organizations control their current paper workflow in a manageable electronic format, streamline operations, increase productivity and enhance the levels of services that you can provide to both external and internal customers. We have extensive experience in providing Digital Imaging Equipment, Conversion Services, Content Management Software, Consulting, Design, Implementation, Training, Maintenance and Support Services to customers within the US. Databank IMX has implemented and currently supports more than 800 customers utilizing the OnBase software.

Databank has been setting the pace as a leader in the document management industry for the past 25 years. We are a growing company, currently operating seven document conversion centers in major cities across the United States. DataBank has implemented the most advanced and secure WAN in our industry and made significant investments upgrading our conversion centers. DataBank has achieved SOC 2 and PCI/DSS certifications to ensure that our customer's data is safe and secure when in DataBank hands.

Databank has successfully completed some of the most challenging and innovative ECM projects in the country. DataBank provides several advantages to our customers including experienced and knowledgeable personnel, a world class infrastructure and the technologies necessary to complete our projects. DataBank will be able to implement a solution that meets and exceeds your business requirements, providing a robust platform for future growth and development, without requiring huge budgetary commitments to maintain or extensive custom code.

DataBank has a team of 25 OnBase Certified Installers and over 100 members of our technical support team. Our technical staff consists of OnBase Certified Engineers, Microsoft Certified Systems Engineers, Microsoft Certified VB Developers, CDIAs (Certified Document Imaging Architect), and (ECMp) Enterprise Content Management Professionals, GISPs, professional developers and consultants. Specific members of our technical staff will be available to ACC to design, configure and implement this solution as well as to support the system after the installation.

Our Professional Services teams offer requirements validation, project planning, system design, site review and preparation, and various other system-specific consulting. We also offer installation and implementation services, quality assurance testing, change control, end user and system administrator training, user systems acceptance testing, production cut-over services, post-implementation evaluation, and project management. On-going project management often occurs for existing and future expansion of departmental implementations across the organization to an enterprise-class system.

Databank is entirely focused on helping its nearly 3,000 customers to address their document and information management issues. Databank works consultatively with each client to develop the optimal solution to address its unique document management challenges. DataBank has established a reputation for excellence in conversion, integration and excellence in consulting, designing, and implementing document management and record management technologies. We are particularly adept at working closely with clients to determine solutions to intricate problems and are committed to providing quality service. Databank serves numerous organizations among the Fortune 1000 as well as many mid-size businesses, state and local government agencies, healthcare, financial and educational institutions. We perform as a valued partner and subcontractor to many of our nation's largest and most successful consulting, defense and technology companies. DataBank also has a SharePoint practice called DataPoint which can provide a full range of

consulting services and specialized software to improve the results that you are able to obtain with your SharePoint deployment.

Project Implementation Methodology

Project Organization

DataBank will assign a Project Manager, Business Analyst, Implementation Specialist, and Training Coordinator to the project team. The DataBank Project Manager will work with the Customer's Project Manager to ensure the successful implementation of the OnBase Enterprise Document Management System.

Project Management Approach

DataBank's project control system is a formal, best practice project management methodology focusing on developing a quality product, maintaining schedule integrity, cost controls, and the effective use of DataBank's resources and Client resources. We manage to the contractual requirements of the job with a special emphasis on the following management areas:

- Scope Management
- Quality Management
- Contract Change Management
- Time Management
- Risk Management
- Project Schedule Management
- Integration Management
- Project Cost Management

DataBank will provide a seasoned Project Manager with a proven track record of successfully managing the deployment of many Enterprise Document Management Systems for government clients. The Project Manager is responsible for:

- Project implementation, managing the day-to-day technical activities of the project, and coordination with the Customer's Project Manager. Responsibilities include:
 - Ongoing planning and coordination
 - Preparation of Bi-Weekly Status reports
 - Status reporting to client Project Manager
 - Coordinate DataBank technical team personnel and schedules
 - Close management on project scope and limitation of Change Order Requests
 - Technical issue tracking and resolution
 - Perform Risk Assessment with Project Team
- Progress Documentation
 - Bi-Weekly Status Reports – Project Manager will prepare and submit a bi-weekly progress report to the Customer's project manager. The Bi-Weekly Status Report will provide a status update on the progress of the EDMS Project indicating the following:
 - Project tasks completed during the current reporting period. Identify tasks that have fallen behind schedule, the reason and mitigation measures
 - Project tasks planned for the next reporting period
 - Updated Project Schedule
 - Project Budget Status

- Identify and summarize all risks and problems identified that may affect the Project.
- Identify the action and resource(s) responsible for mitigating the risk and resolving the problem
- Contract/Change Management Process
 - o Throughout a Statement of Work, every effort is made by DataBank and the client to anticipate the most likely situations that can be encountered. The pricing of our services is determined using collective assumptions. When work is requested that is outside the stated scope of work and/or responsibilities of both parties, a Change Order will be executed that will reflect the additional work, along with an associated price, plus or minus. When additional work is requested on an open-ended basis, it will be priced at the standard hourly rates.

Discovery Approach

DataBank will perform Discovery workshops to gather the data needed to design the EDMS solution and automated workflow solutions. Discovery tasks will include the following:

- Requirements Gathering: User Groups / User Privileges / User Security Levels
- Identify the Unified County Taxonomy: Document Types / Keywords / Classes / Index Values
- Review and document current as-is business processes
- Review systems that may be integrated with OnBase using App Enabler

Design Approach

Throughout the process of Discovery, DataBank will create and maintain a Solutions Design Document (SDD) which will provide a high level solution design for the project. The SDD will contain the following information:

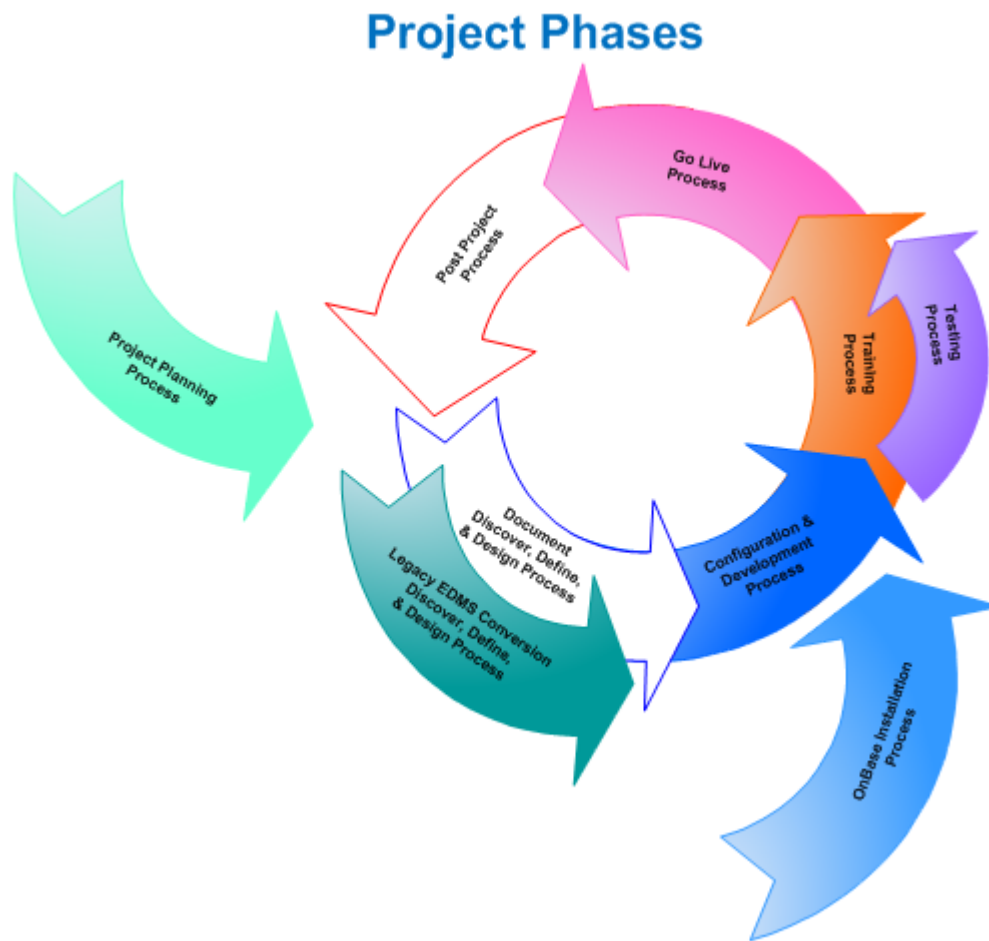
- Taxonomy Matrixes
- Design to-be automated workflow solutions to streamline the as-is core business processes identified during discovery
- Meet with the key project stakeholders to review the SDD and approve the solution design
- Create a Project Plan including timeline, tasks, resources, key milestones, and deliverables

Implementation Approach

The Implementation approach will be divided into a phased approach with prioritized core Business Processes adhering to the following principles:

- Install the OnBase infrastructure components such as Content Server, Application Server, Database Servers, etc.
- Implement the ECMS in a phased approach determined by business needs and potential benefits as identified during the Discovery process
- Build a solid Imaging / Electronic Document Management foundation with a unified taxonomy for the Phase Business Processes including automated Workflow solutions, E-Forms, Records Management, E-Forms, and E-Signature, as identified during the Discovery process.

The diagram below illustrates the flexibility for rolling out OnBase as it can be implemented as a complete solution or in a phased approach for large installations.



Testing Approach

DataBank will assist the customer with developing test scripts and perform testing of all EDMS infrastructure and the Business Process solutions to ensure a fully functional system. Testing will include the following:

- Perform unit testing of the business processes automations, user groups, document types, and document the results.
- Assist the Customer's creation of the Quality Assurance Testing (QAT) training material
- The Customer will be required to conduct quality assurance testing and provide authorization before the solution is made available in a production environment.
- Perform necessary configuration changes or enhancements to resolve issues that are identified during QAT
- Systems Administration will be thoroughly tested and the results will be documented.

Training Approach

Solution knowledge transfer will be conducted at the completion of the solution implementation. This knowledge transfer is conducted between the DataBank Implementation Specialist and the client's OnBase administration staff. The intent of the knowledge transfer is to provide the information essential for basic administration and maintenance of the specific configured solution.

In an effort to reduce costs and provide adequate knowledge transfer, DataBank will utilize the "Train the Trainer" method of end user training. This allows the Customer's resources to better support the delivered solution after DataBank staff is no longer on site. The target candidates for this training are key users that can facilitate the training of the rest of the user base.

It is strongly recommended that the Customer's OnBase administrators be in all training classes. This approach provides OnBase admin staff the opportunity to review the OnBase solution multiple times to better learn the product that they will be administering.

References

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Flagstaff, AZ 86001
Richard Eaton
reaton@coconino.az.gov

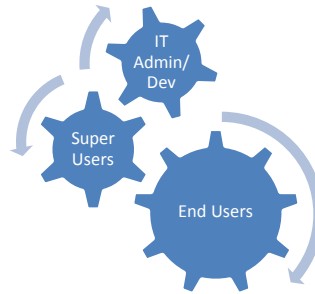
TRAINING

Training for your solution is a critical part of the process. Although it comes in toward the end of the development, it is really the beginning of the usage and adoption of the solution. Ensuring the proper governance and rules are observed while generating the appropriate energy to support positive change management and adoption is an important balance to strike.

Our strategy is to work closely with you to identify the opportunity, design and craft the solution with your involvement, then empower your team to get the most out of using the solution.

- prepare the team (customer and DataBank) with a clear vision of goals and training
- define and scope the objectives through thorough discovery and clear deliverables
- deliver a “what’s coming” session to super users
- design and build the solution with involvement from the customer throughout (super users/ IT)
- train the customer testing team on the solution
- prepare the customer team with test cases, incorporating a clear feedback and tracking mechanism for issues and enhancements
- deliver a “what’s coming” session to end users
- develop customized messaging by role by task in preparation for live communication and, if needed, just-in-time eLearning (video) assets, by role by task
- develop measurement tools to qualify understanding by role by task
- develop super user curricula
- deliver super user training, “what’s possible”
- rollout end user training by role by task prior to go live in a particular area
- measure the knowledge of the participants, developing a plan for closing gaps
- provide eLearning (video) assets for just-in-time training through the platform of customer’s choosing
- deliver a “what’s working, what’s next” session to super users 30 days after go live

There are essentially three groups that should be considered, and one of those will represent potentially diverse needs and many different audiences in and of itself. The group owning the maintenance and administration referred to here as system administrators, the group using the OnBase solution referred to here as end users, and the group responsible for innovation, change, and governance of the OnBase solution referred to here as the super users. The super users should be part of the end user community.



OnBase Administration Team:

The customer employees maintaining, managing, and extending this solution once the solution goes live. Often referred to as system administrators, this group can exist inside or outside of IT/ IS, and can span multiple groups including but not limited to support, development, security, audit, and operations. Our goal is to empower this team to own the solution. What ownership means to us is that the team is capable of maintaining the solution, recognizing opportunities to improve the solution, extending the solution, and building new pieces on their own. DataBank is available to help support problems, take on new projects, or anything in between; however, the customer's OnBase team can choose the when, where, and depth of such engagement. The customer team can choose to engage DataBank more often or less often depending on the goals surrounding the level of engagement.

For this group, there are a number of different live classes and just-in-time learning options that are available.

Week-long classes:

There are several week-long classes offered in face to face (in a contiguous week) or live online (every other day across two weeks) setting. System Administration, Introduction to Workflow, and Workflow Design should be incorporated at planned points during the project. DataBank University allows re-attendance to a paid class for any participant at no charge for up to one year. We recommend the System Administration be attended close to the beginning of the project to aid in the participation and decision making throughout the development of the solution; keeping in mind that this class may be attended again as a refresher closer to go-live, if necessary.

Spotlight classes:

DataBank's SPOTLIGHT courses are laser focused, one day courses featuring a variety of topics delivered by experts. They were created to address the need for in depth analysis of important features that the scope of other classes didn't allow for. These classes provide you the opportunity to learn more in less time, while still having the experience and benefits of live instruction. Some examples of SPOTLIGHT class topics are Unity Forms, OnBase Studio, OnBase Security, and Reporting.

On Demand classes:

The Premium Subscription contains 250+ hours of on-demand OnBase technical training. Organizations with a subscription are granted not only 24/7 access, but downloadable resources, progress tracking, and more. This subscription can be taken advantage of by all users across the organization for one yearly fee.

Events:

DataBank LIVE and Community live are DataBank and Hyland's annual user conference, respectively, featuring expert-led sessions, valuable networking opportunities, and an opportunity to get to know your partners. DataBank also offers a pre-conference training day featuring hands-on workshops.

End User Training on the Solution:

The group of people using the solution is normally the largest of the groups and ultimately the reason for implementing the solution. This group is often referred to as end users. Normally, there are many different audiences in this group, from power users to inquiry only users to milestone approvers, this is best taken in a “by role by task” approach.

Targeted instruction delivering the right message to the right people at the right time requires separation of the audiences by role and by task, but adds a remarkable level of clarity through relevant-only information. The supporting material provided should also be by role and by task, making it easy to locate and easy to follow. This may be a combination of book/ ebook/ video.

This can be delivered in a series of live events very effectively. This can also be delivered through a series of short just-in-time eLearning video assets. Short and on point task based videos may be approach five minutes in length per task. The shorter duration will help encourage consumption. These people critical to the process can learn from a mentor whenever they need it. From a user adoption and change management perspective, these are definitely better together. Use of the live events to generate positive energy and change, while the just-in-time components are available to fill gaps, deliver a consistent message across large geographic boundaries, and deliver a consistent message over time as a refresher and to new employees.

Measurement should follow the training by role by task for those using the solution. Identify those that know how to properly use the solution, while identifying areas that need to be addressed with others. Measurement is critical to establishing a follow-up plan to be sure that the critical people in this process understand how to use it properly.

Super Users:

These are the advocates, innovators, and change agents. The super users are members of the end user community, but play a special role. This group of users will help shape how they will use the solution, what is important, and define what is next. We like to engage the super users early in the process in order to involve them in key decisions. The super users then help with adoption and change throughout the rollout.

The super users gain access to what is possible. This empowers them to use their institutional knowledge of their business to facilitate the proper change requests to IT. Over time, this group will offer an ongoing and continuous improvement that will not only adapt to business change, but will continue to get better over time. Establishing an ongoing meeting of this group is encouraged.

When IT doesn't intimately know the business processes and challenges, and the end users are not aware of what can be built/ changed, the super users can function as the bridge crossing this often encountered gap.

TIMELINE

ID		WBS	Task Mode	Task Name	Work	Start	Finish	Predecessors	Resource Names
1		1		Town of Chino Valley	368 hrs	Mon 6/4/18	Fri 8/3/18		
2		1.1		Discovery & Design	68 hrs	Mon 6/4/18	Tue 6/26/18		
3		1.1.1		Data gathering	32 hrs	Mon 6/4/18	Tue 6/5/18		BA,SE
4		1.1.2		Create SDD	32 hrs	Wed 6/6/18	Mon 6/11/18	3	BA
5		1.1.3		SDD Review and Signoff	4 hrs	Tue 6/26/18	Tue 6/26/18	4FS+10 days	BA
6		1.2		Development	108 hrs	Tue 6/26/18	Wed 7/18/18		
7		1.2.1		Infrastructure setup	8 hrs	Tue 6/26/18	Wed 6/27/18	5	SE
8		1.2.2		Software installation	2 hrs	Wed 6/27/18	Wed 6/27/18	7	SE
9		1.2.3		Basic OnBase Configuration	16 hrs	Wed 6/27/18	Fri 6/29/18	8	SE
10		1.2.4		Configure user groups	4 hrs	Fri 6/29/18	Mon 7/2/18	9	SE[50%]
11		1.2.5		Configure Workflow	26 hrs	Mon 7/2/18	Fri 7/6/18	10	SE
12		1.2.6		Configure (2) Agenda Item Forms	16 hrs	Fri 7/6/18	Tue 7/10/18	11	SE
13		1.2.7		Configure Agenda Item Approval Workflow	16 hrs	Tue 7/10/18	Thu 7/12/18	12	SE
14		1.2.8		Configure (2) document template forms in Word for	8 hrs	Thu 7/12/18	Fri 7/13/18	13	SE
15		1.2.9		Configure Agenda Online Portal	8 hrs	Mon 7/16/18	Tue 7/17/18	14	SE
16		1.2.10		Solution demo preparation	4 hrs	Tue 7/17/18	Wed 7/18/18	15	SE[50%]
17		1.3		Testing	48 hrs	Tue 6/26/18	Wed 7/25/18		
18		1.3.1		Create test plan	8 hrs	Tue 6/26/18	Tue 7/3/18	5	BA
19		1.3.2		Unit Testing	16 hrs	Wed 7/18/18	Fri 7/20/18	16	BA
20		1.3.3		Create test scripts for QAT	8 hrs	Tue 7/3/18	Wed 7/4/18	18	BA
21		1.3.4		QAT assistance and issue resolution	16 hrs	Wed 7/18/18	Wed 7/25/18	23	SE
22		1.4		Training	40 hrs	Wed 7/4/18	Wed 7/11/18		
23		1.4.1		QAT training	8 hrs	Wed 7/4/18	Thu 7/5/18	20	Trainer
24		1.4.2		Create training materials	8 hrs	Thu 7/5/18	Fri 7/6/18	23	Trainer
25		1.4.3		End user training	24 hrs	Fri 7/6/18	Wed 7/11/18	24	Trainer
26		1.5		Production Deployment	32 hrs	Fri 7/13/18	Mon 7/23/18		
27		1.5.1		Migration to Prod	12 hrs	Fri 7/13/18	Mon 7/16/18	25	SE
28		1.5.2		Go-Live Support	16 hrs	Wed 7/18/18	Fri 7/20/18	27	SE
29		1.5.3		Handoff to Support	4 hrs	Fri 7/20/18	Mon 7/23/18	28	SE[50%]
30		1.6		Project Management	72 hrs	Mon 6/4/18	Fri 8/3/18		
31		1.6.1		Meetings	14 hrs	Mon 6/4/18	Fri 8/3/18		PM[4%]
32		1.6.2		Planning and admin	58 hrs	Mon 6/4/18	Fri 8/3/18		PM[16%]
33		2		Contingency Reserve	74 hrs	Mon 12/3/18	Thu 12/6/18		
34		2.1		Change Management	74 hrs	Mon 12/3/18	Thu 12/6/18	32	SE,PM,BA

ONGOING TECHNICAL SUPPORT

Who and What Is DataBank Support?

The DataBank Support Team is your dedicated contact point for the ongoing support of your DataBank solution. We are committed to the highest quality support focusing on both your overall solution needs as well as any technical issues. We intend this guide to help you understand our commitment and how best to access the wealth of knowledge and support available from our team while also communicating guidelines and expectations for your experience.

We provide assistance on issues and questions related to the installation and use of supported products which comprise any DataBank solution. We have a simple philosophy of helping answer your questions to prevent future problems whenever possible. We encourage you to reach out for our guidance as your solution grows, and we encourage all our Customers to participate in formal training programs whenever possible. DataBank offers many such programs both exclusively and in conjunction with our technology partners. These sessions also give us the opportunity to answer your questions about functionality (how-to, tips and tricks). Please contact your DataBank Account Manager to discuss formal classroom or virtual training options.

Our Commitment to You:

- Address cases first in, first out by severity
- Provide Industry Leading Assistance
- Reply Promptly to Begin Troubleshooting
- Proactively Follow-Up on Open Issues
- Provide Long-Term Solutions
- Find Information and Resources to Answer Questions

What Is Supported?

Hardware and software supplied by DataBank as part of a Process Automation Solution is purchased with maintenance or software assurance agreements to ensure reliability of your solution. While the specific terms for support may vary based on the technology provided, under DataBank's support agreements our Customers have access to the manufacturer's product upgrades and patches when available. Our support is limited to manufacturer's stated hardware and software compatibility and subject to their product lifecycle. If your hardware or software inquiry is related to an evaluation/piloted solution component or if the solution component you wish to discuss or review has never been purchased, your DataBank Account Manager will be engaged to assist in aligning resources to assist with your inquiry.

While our assurance and support provides access to the product upgrades and defect corrections, unless otherwise covered by a separate Professional Services agreement, it is the Customer responsibility to test and install the solution component. Please contact your DataBank Account Manager to engage Professional Services assistance with any implementation, upgrade, consulting, design, or testing tasks. Support will spend a reasonable amount of time triaging the issue(s) to determine the root cause and report to the Customer

regarding whether the incident can be covered under normal support or if the work will require additional fee-based resources. (i.e. Quick guidance on new module becomes need for additional consulting or assessment of needs.)

Lapsed Maintenance

In the event of a lapsed maintenance agreement, Support will work with your Account Manager to reinstate as quickly as possible per software providers' policies. Available support may be limited during lapsed maintenance due to contractual restrictions imposed on us by the software or hardware manufacturer, and their reinstatement fees will likely be imposed. If your payment has been delayed past the due date, while we will try to work with you, it is your responsibility to ensure that maintenance coverage is intact and in good standing and support may be frozen pending past due payments. To avoid unnecessary delays, we recommend renewing and paying for your maintenance agreement 30 days or more in advance of expiration to ensure continuity of support. DataBank works to provide advance invoicing on all support agreements to allow a sufficient amount of time to process. If you have any questions on the processing of maintenance renewals and payments, please reach out to your Account Manager.

Third Party Contractor Work

Customer performed changes and development are provided full maintenance support as set forth in the 'Included Support Activities' section. If a third party is contracted to perform analysis, development, upgrades, etc. they are expected to provide support for their efforts and participate in troubleshooting that requires DataBank Support involvement. A direct Customer contact must open cases with DataBank Support providing items detailed in the 'Case Resolution Process' section.

24x7 System Down Support

DataBank Support offers 24x7 system down support as a function of standard maintenance for the OnBase product. Kofax 24x7 support is available via an additional maintenance agreement, contact your Account Manager if interested.

Customers must report their system down issues via telephone outside of our 8AM ET - 8PM ET operating hours at which time an on-call Agent will be assigned within one (1) hour. After the creation of the support ticket an initial assessment will be completed to confirm the issue qualifies for after-hours support and the ticket will be worked or the Customer will be advised the issue does not meet the criteria and the ticket will be worked the next business day during operating hours. Triage to a system down issue may include direction to rollback recent changes to be reviewed further during normal operating hours and will focus on restoring access and stability to the system allowing for further analysis to be performed during operating hours the next business day.

QUESTION OR ISSUE RELATED TO	WHAT WE PROVIDE
ERROR MESSAGE	Troubleshooting and review of usage. Provide applicable work-around, updated software version

	information, or submit defect report to product manufacturer.
PRODUCT FEATURE USE	Clarification of intended and proper use. Guidance on manufacturer documentation or items not detailed in manufacturer documentation. Basic questions related to “Is this possible?” or “How do I...?”
PRODUCT INSTALL AND CONFIGURATION	Guidance on best practice and clarification of manufacturer documentation. Download information for needed documentation and software. Assist trained Customer contact with guidance on process of installing or minor configuration changes.
SCANNERS	Download information for needed documentation and software. Basic troubleshooting within supported software solution.
SOFTWARE LICENSING	Assistance to apply licensing. Guidance on determining proper assignment of license(s) for desired usage.
SUSPECTED PRODUCT DEFECT	Review of usage/issue to determine defect status. Provide applicable work-around, updated software version information or submit defect report to product vendor.
SYSTEM DOWN	Initial effort to triage and restore system. Engage manufacturer or internal teams for assistance based on complexity and severity.
UPGRADING	Manufacturer required activation or response codes. Download information for needed documentation and software. Maintenance status check prior to upgrade.

Contacting DataBank Support

Customers can contact Support using the following methods. Cases will be routed to the appropriate team or resource if the DataBank Support Team is not the appropriate team.

ONLINE	http://support.databankimx.com	24x7 Self-Service Case Submission
EMAIL	support@databankimx.com	24x7 Email Case Submission
PHONE	866-590-5545	Live Agents Monday to Friday, 8AM – 8PM ET *

** Excluding holidays, or as otherwise provided by DataBank to its end-users who have a current Maintenance and Support Plan. Holidays include New Year’s Day, Memorial Day, Independence Day (business day prior if on weekend), Labor Day, Thanksgiving Day and following day, and Christmas Day.*

See the 24x7 System Down Support Section for additional clarification of after-hours support offerings. Manufacturer policies and restrictions may apply to the Support Services offered by DataBank Support.

How Are Cases Managed?

We use Zendesk, an industry leading service portal, to manage and monitor customer interactions. Customers have access to their case history as well as a knowledgebase of expansive knowledge collected from our many customers and can open cases at any time of the day (to be in queue during business hours) and easily attach backup material for each case.

Case Resolution Process

The Support Team works issues by severity (see 'Case Severity Levels' for definitions) in a first in, first out methodology to ensure a positive experience for all Customers. The following steps define the handling process from the point of contacting Support to open a case.

1. Details including severity are gathered via telephone or electronic submission.
 - a. For electronic submissions we may seek further clarification for proper routing and handling.
2. Unique case number is assigned.
3. Maintenance status check.
4. Case assignment.
5. Contact by Support Agent for troubleshooting or to direct to appropriate team. Prioritize cases if multiple open.
6. Case marked resolved and summary of root cause provided as appropriate. After resolution a survey will be sent and Customers are encouraged to rate the service and provide feedback.

Case Escalation

We want to promote a Customer care environment that encourages you to voice concerns and praise to our Support Leadership at any time or to request an increased priority level for your case. To help you better understand the potential escalation route, our team is comprised of Support Agents, Team Leads, Directors, VPs and our CEO. You can request an Agent connect you with a Team Lead at any time for first level escalation or the Director of Support if appropriate. For Urgent and High severity issues the Support Leadership Team is automatically notified for monitoring and review and they may proactively reach out to the Customer during or after the case. Automated notifications are also sent to the Support Leadership for ongoing critical issues as well as other key teams within DataBank in the event additional assistance becomes necessary.

Direct Escalation Contact Info:

Our leadership team, including our Director, is available via DSTeamLeads@databankimx.com for your convenience. You can use this method to provide praise or express concern with your experience with our team and/or to get assistance with reaching out to other leadership in the company. You can also request a Team Lead at any time by phone and ask to be connected with our Director of Support.

Manager & Team Leads:

<i>Aubrey Kosztya (Manager)</i>	<i>Jackie Thompson (Team Lead)</i>	<i>Nick Mushat (Team Lead)</i>
<i>Office: 440-210-3282</i>	<i>Office: 240-297-6505</i>	<i>Office: 440-424-5219</i>

Senior Leadership:

Director of Support:	VP, Client Solutions:
<i>Cory Archer</i>	<i>Matt Charlson</i>
<i>Office: 216-245-0134</i>	<i>Office: (513) 283-8340</i>
<i>Cell: 440-941-7801</i>	<i>Cell: (612) 669-1449</i>
<i>Email: carcher@atabankimx.com</i>	<i>Email: mcharlson@atabankimx.com</i>

Case Severity Levels

Each case submitted is assigned a severity based off the following guidelines with the indicated target max response times. Case severity may be adjusted from original submission per the guidelines below or throughout the life of a case as appropriate.

SEVERITY LEVEL	DESCRIPTION	MAX RESPONSE
URGENT	Call 866-590-5545 to report this severity of issue. The supported Production solution is completely unavailable for all critical business units or greater than 75 percent of users. If Customer agrees or appropriate per guidelines, the severity level may be lowered.	30 minutes
HIGH	The supported Production solution is intermittently unavailable or experiencing degraded performance for all critical business users or greater than 50 percent of users. If Customer agrees, the response time may be longer.	2 hours
NORMAL	The supported solution is experiencing minor to moderate issues. A higher severity issue could be downgraded to this severity if a temporary work-around is available. This is the highest severity for non-production issues.	4 hours
LOW	Non-critical issue typically impacting a single user that does not require immediate attention. Basic questions such as "Is this possible?" or "How do I...?" usually fall into this level.	6 hours

Remote Support Tools

Our Support Team uses several remote support tools to provide the highest possible service level. If there are challenges, concerns, or questions related to these tools or any specific requirements necessary to accommodate your environment we encourage you to contact us and speak with a Team Lead.

Customers are expected to provide a reliable means and specified contact person enabling remote access to applicable servers and/or workstations for troubleshooting. If remote access is not made available and the issue exceeds phone/email support capability, Support may contact

your DataBank Account Manager to engage Professional Services assistance for on-site support outside of our standard maintenance.



Our main remote troubleshooting tool. We also use this tool to securely transfer files from a Customer for use in troubleshooting.

[TeamViewer Security and Privacy Information](http://www.teamviewer.com/en/products/security.aspx)
<http://www.teamviewer.com/en/products/security.aspx>



Backup remote troubleshooting tool. Can be used in the event our Customers have policies preventing the use of TeamViewer and WebEx.

[GoToMeeting Security White Paper](https://www2.gotomeeting.com/default/downloads/pdf/p/GoToMeeting_Security_White_Paper.pdf)
https://www2.gotomeeting.com/default/downloads/pdf/p/GoToMeeting_Security_White_Paper.pdf



Backup remote troubleshooting tool. Can be used in the event our Customers have policies preventing the use of TeamViewer and GoToMeeting.

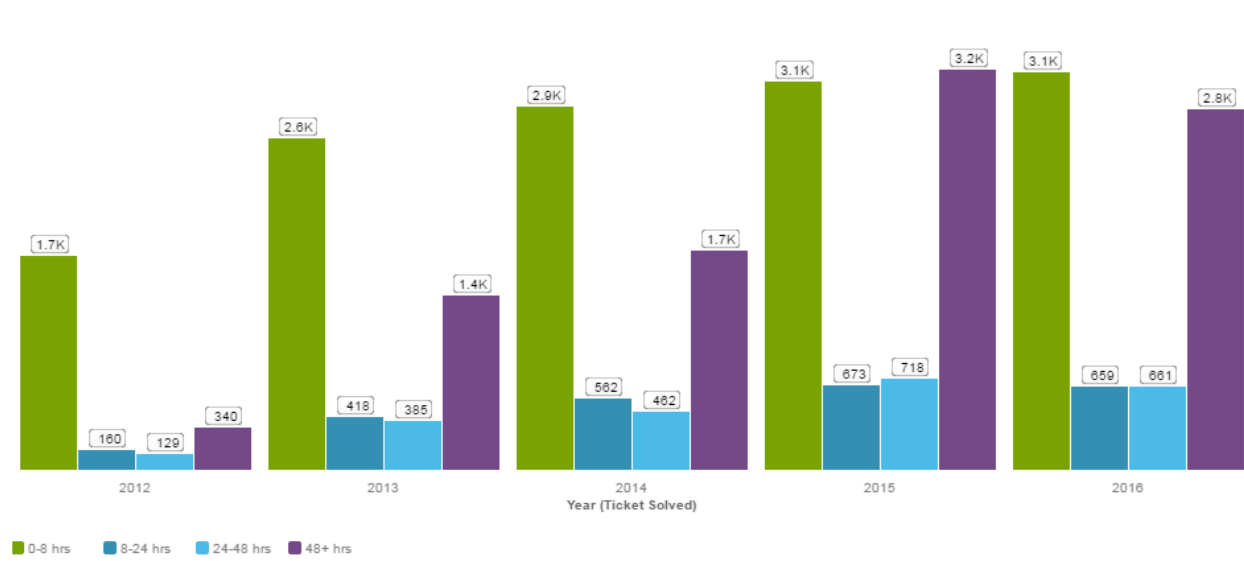
[WebEx Security White Paper](http://www.webex.com/includes/documents/security_webex.pdf)
http://www.webex.com/includes/documents/security_webex.pdf

Annual Support Statistics – 2016

Here are some key performance indicators from the previous calendar year.

Staffing	16
Call Answer Rate	99.823%
Calls Received	2264
Average Time to Answer	8 seconds
Total Support Issues	7268
Satisfaction Score	99.5%
Average Case Resolution	38.5 hours
# of Tickets with Customer Concern	9

Case Resolution Times



ASSUMPTIONS

Activity	Description
Discovery	▪ Preview existing Customer descriptions of business requirements, recommendations of Vendor solution consultants/architects, etc. that have been prepared to describe prospective solution approach ▪ Review requirements directly with subject matter experts from the business areas and technical experts from IT, etc. ▪ Review interfaces and applications to evaluate the current business processes and required interactions for a desired future state. ▪ Complete internal analysis of information gathered in discovery
Design	▪ Research and consultation regarding solution designs ▪ Internal solution design workshops ▪ Draft a high level Solution Design Document (SDD) for the solution components identified during Discovery including: ○ Documentation of the OnBase software components ○ Outline of interface - integration design requirements ○ Configuration Matrix Spreadsheet

The scope of this project is limited to planning, development, testing, training, and deployment activities associated with the implementation of this project. Installation and/or configuration of OnBase components that are not listed in the quote will require an approved change order.

The scope of this initiative will be limited to the following activities:

Activity	Description
Solution Development	Basic OnBase Configuration Document type groups (up to 2) Document types (up to 25) Keywords (up to 15)Configure E-Forms (2) Configure User Groups Configure Workflow Configure 1 Lifecycle with up to (5) Queues Up to (5) Ad-hoc tasks Up to (2) Notifications Up to (2) Timers Configure (2) Agenda Item Forms Standard Keyword fields (Up to 15) Agenda submission timeline rules (up to 2) Document Type Attachments (up to 10) Standard Agenda Templates (up to 2)

Activity	Description
	Configure Agenda Item Approval Workflow Workflow Queues (5) Ad Hoc Tasks (4) Timers (4) Notifications (5) Configure (2) Document Template Forms in Word Format Agenda Outline Agenda Summary Configure Agenda Online Portal Web Portal Installation URL Agenda Portal Link from Client's Website Configure Standard Functionality Configure Production Document Imaging Configure Scan Queues (up to 2)
Testing	▪ Perform unit testing to test basic OnBase functionality such as user login, scanning, retrieval, and storage. ▪ Assist with User Acceptance Testing (UAT) ▪ Final Testing and Issue Resolution, if needed
Training	▪ Create training documentation ▪ UAT training ▪ End user training
Production Deployment	▪ Migration of solution to Production ▪ Go-live support ▪ Handoff to Support
Project Management	Vendor will assign a Project Manager who will manage the day-to-day activities of the project in conjunction with the Client Project Manager. Responsibilities include: ▪ Coordinate DataBank technical team personnel and schedules ▪ Ongoing planning and coordination ▪ Lead weekly status meetings with the project team ▪ Preparation of weekly status reports ▪ Status reporting to client Project Manager ▪ Project Plan management ▪ Close management on project scope and limitation of Change Order Requests

The following items have been discussed but are considered **out of scope** for this project:

Activity	Description
Data Conversion	Work outlined in this SOW does not include data conversion from existing or legacy systems to OnBase. Out of scope items would include, but not limited to: data related to integration, content stored in other repositories, etc. If this is desired, an approved change order will be required. Modules have been included to support the ingestion of files from shared drives. However, additional discovery would need to be completed in order to estimate the professional services to perform the data migration.
Custom Interfaces	Standard OnBase interfaces will be leveraged for this project. Customized web front-ends, applications, or web services are not in scope and will require an approved change order.
Integrations	Application integrations with OnBase that are not included in the SDD will require a change order.
Activities not listed	Activities not listed in the in scope statement will require a change order.

SERVER AND HARDWARE REQUIREMENTS

ONBASE SPECIFICATIONS

Software and Hardware Requirements

NOTE: The following recommendations are for OnBase 17 SP1.

Databases Supported

MICROSOFT SQL SERVER™:	• 2008 (RTM, SP1, SP2; SP2 is recommended) • 2008 R2 (RTM, SP1; SP1 is recommended) • 2012 • 2014 • 2016 • 2017 (Note: Your SQL Server database client software version must match or exceed the database server version. Running a previous client version, such as SQL Server 2008, will result in system instability and memory issues.)
ORACLE	• All 11g drivers can be used. • All 12c drivers can be used. (Note: It is strongly recommended that you have a certified Oracle DBA on staff.)

Due to critical issues that have been reported to Hyland Software, we strongly recommend that:

- Your database client software version matches or exceeds the database server version.
- You are running the most recent version of the database client.

Unicode Database Support

OnBase provides optional Unicode support for multiple code pages in the same database.

Operating Systems Supported

Desktop

Operating System	OnBase Client	Web/ Application Server	Web Client	Unity Client
WINDOWS SERVER 2008 R2 SP1 (OR LATER SP)	X	X	X	X
WINDOWS 7 SP1 (OR LATER SP)	X	N/A	X	X
WINDOWS 8.1	X	N/A	X	X
WINDOWS SERVER 2012 R2	X	X	X	X
WINDOWS 10	X	N/A	X	X
WINDOWS SERVER 2016	X	X	X	X
APPLE MAC OS X (VERSION 10.6 OR LATER)	N/A	N/A	X	N/A

OnBase Client supported operating systems require both:

- Microsoft .NET Framework 4.6 or later
- Microsoft Visual C++ 2015 Redistributable Package (x86)

Mobile

ANDROID SUPPORT	• Android OS 2.2 or greater to use OnBase Mobile Access for Android. • Android tablet is optimized for use on Android OS 3.0 or greater.
iOS SUPPORT	• As of the initial release of OnBase 17 SP 1, OnBase Mobile Access and Mobile Healthcare applications are supported on iOS versions 9.3.5 and 10.3.2. • After the initial OnBase release, OnBase Mobile applications will continue to be supported on up to two of the latest major versions of iOS.
WINDOWS SUPPORT	Windows 8.1 or greater to use Mobile Access for Windows.
WINDOWS PHONE SUPPORT	Windows Phone OS 8 or 8.1 to use Mobile Access for Windows Phone.*

OnBase mobile applications are periodically updated to include new functionality and fix software defects. When these applications are updated, the updates are not automatically deployed to devices. Users must update the OnBase Mobile application on their devices through the appropriate application store/market. These updates do not require an OnBase upgrade.

Client Hardware Requirements

Client Retrieval Workstation

CPU	2 GHz or faster
MEMORY (RAM)	2 GB
FREE HARD DISK SPACE	2 GB or greater
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)

OCR Processing

CPU	2 GHz or faster
MEMORY (RAM)	8 GB or greater (Additional RAM may be needed if working with grayscale or color images.)
FREE HARD DISK SPACE	2 GB or greater

CD/DVD/Blu-ray Authoring

CPU	2 GHz or faster
MEMORY (RAM)	2 GB or greater
FREE HARD DISK SPACE (MINIMUM)	• CD Authoring: 3 GB • DVD Authoring: 8 GB • Blu-ray Authoring: 27 GB (If exporting or publishing, add an additional 1 GB to the appropriate value above for the Export directory structure.)
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)

Client Scanning

CPU	2 GHz or faster
MEMORY (RAM)	2 GB or greater
FREE HARD DISK SPACE	2 GB or greater
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)
SCANNER (MINIMUM)	TWAIN compliant

Web/Application Server & Core Services Requirements

Server Hardware and Browser Requirements

Web and Application Servers must be dedicated purpose servers; not used as a domain controller, DNS server, non-OnBase Web server, email server, print/database/file server, index server, proxy server, network backup server, jukebox manager, network performance monitor, OnBase Client processing workstation, or Workflow/API OnBase Client broker. Network and disk I/O hardware should be optimized for performance and redundancy. Two network ports can reduce server bottlenecks by using a segmented network for external and internal requests, where external requests are sent to the Web clients and internal requests are sent to the file and database servers. A Gigabit Ethernet connection to the file server and minimal latency connection to the database server are recommended.

32-Bit Web and Application Servers Only

CPU	Intel® Xeon™ processor with multiple cores or processors
MEMORY (RAM)	8 GB
FREE HARD DISK SPACE	2 GB or greater (Available disk space should be at least twice the size of the largest file users may upload)
NETWORK CARD	Gigabit Ethernet or higher
WEB BROWSERS (MINIMUM)	Microsoft Internet Explorer 11.0 (Note: Ensure all Windows Server updates are applied)
MICROSOFT INTERNET INFORMATION SERVER (IIS)	Microsoft IIS 7.5, 8.0, 8.5, or 10.0
SERVER .NET/XML /RUNTIME LIBRARIES	Microsoft .NET Framework 4.6 (this can be obtained from the Microsoft Download Center at http://www.microsoft.com/downloads) All of the following Redistributable Packages are required: Microsoft Visual C++ 2015 (x86) (Note: To ensure that the appropriate MSXML updates are applied, the latest Windows updates must be installed.)

64-Bit Application Server Hardware and Browser Requirements

CPU	Intel® Xeon™ processor with multiple cores or processors
MEMORY (RAM)	12 GB
FREE HARD DISK SPACE	2 GB or greater (Available disk space should be at least twice the size of the largest file users may upload.)
NETWORK CARD	Gigabit Ethernet or higher
WEB BROWSER	Microsoft Internet Explorer 11.0 (Note: Ensure all Windows Server updates are applied.)
MICROSOFT INTERNET INFORMATION SERVER (IIS)	Microsoft IIS 7.5, 8.0, 8.5, 10.0

Web Client Hardware and Browser Requirements

CPU (MINIMUM)	1 GHz
SYSTEM MEMORY	2 GB or greater
FREE HARD DISK SPACE (MINIMUM)	200 MB
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)
WEB BROWSER	Active X Web Client: - Internet Explorer 11.0 HTML Web Client (Macintosh OS): - Chrome 57 or greater - Firefox® 52 or greater / - Firefox® 52 Extended Support Release (ESR) or greater. - Safari 9.1.0, 10.0.0, 10.1.0, or 11.0.0 * HTML Web Client (Windows OS): - Chrome 57 or greater - EdgeHTML 14 (limited support)** - Firefox® 52 or greater / - Firefox® 52 ESR or greater. - Internet Explorer 11.0
EMAIL PLATFORM	MAPI 1.1 Compliant Email Client connection and supporting Active Messaging DLLs

Notes:

- *The Web Client is not supported in Safari's full screen mode nor in Safari Reader.
- **The HTML Web Client is supported in limited contexts on Microsoft EdgeHTML 14 and greater. In this limited support mode, standard client functionality (e.g., Retrieval, Custom Queries, New Form, Document Import) and dialogs (e.g., Keywords, Re-index, History, Properties) are accessible.



Unity Client Hardware and Browser Requirements

CPU	2.4 GHz dual-core
SYSTEM MEMORY	4 GB
FREE HARD DISK SPACE (MINIMUM)	500 MB
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)
GRAPHICS CARD	256 MB with hardware acceleration support
WEB BROWSER	As long as a supported operating system is being used there are no further web browser requirements.
EMAIL PLATFORM	• Lotus Notes 8.5x • IBM Notes 9.0x • Microsoft Outlook 2007, 2010, 2013 or 2016 • Novell GroupWise 2012 or 2014 (Note: When sending messages with Novell GroupWise, Plain Text is the only format available.)
MEDIA PLAYER	Windows Media Player 10

Unity Client Scanning Workstation

CPU	2.4 GHz dual-core
MEMORY (RAM)	6 GB
FREE HARD DISK SPACE	2 GB or greater
SCREEN RESOLUTION	1280 x 1024 (1440 x 900 widescreen)
SCANNER	TWAIN compliant

Virtual Environments

Hyland Software develops, tests, and supports the OnBase suite of products on specific Operating Systems, not specific hardware configurations. When OnBase is operated in a virtual environment (such as Citrix, VMware, Hyper-V, or Windows Remote Desktop) there may be limitations or subtle differences imposed by the environment. The customer and the virtual environment vendor are responsible for any interactions or issues that arise at the Hardware or Operating System layer as a result of their use of a virtual environment.

When it appears that a performance-related issue in OnBase is either caused by (or is unique to) the virtual environment, organizations may be asked to validate that the issue occurs in a non-virtual environment. Hyland Software will make this request if there is reason to believe that the virtual environment is a contributing factor to the issue.

Each OnBase site is unique. Hyland Software depends on the customers who deploy OnBase in virtual environments to do so only after careful design and adequate planning (that takes into account the workloads of your organization), and in accordance with recommendations provided by the virtual environment's vendor. As with any implementation, Hyland Software strongly recommends that any customer deploying the OnBase solution in a virtual environment thoroughly test the solution before putting it into production.

Notice

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*Below is PDF of the software and hardware requirements above.



Specifications -
OnBase 17 SP1.pdf

PROPOSER'S CONTRACT

DATABANK ONBASE® MAINTENANCE/SUPPORT AGREEMENT

This Agreement is made and entered into as of _____, 20____ (Commencement Date) by and between DataBank IMX LLC, a Delaware corporation, with its office at 620 Freedom Business Center King of Prussia, PA 19406 ("Service Provider"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below ("Licensee"):

Licensee's Business Name: _____

Licensee's Primary Contact: _____

Address City State Zip: _____

Phone: _____

Email Address: _____

RECITALS:

A. Service Provider is an authorized Reseller of Hyland Software, Inc., the Software Development Company ("SDC"). Service Provider has marketed one or more SDC OnBase® Information Management System software modules to Licensee;

B. Licensee has licensed that software pursuant to the terms of an OnBase® End User License Agreement;

C. Licensee desires to obtain, and Service Provider is willing to provide, maintenance and technical support services for those software modules and the delivery and installation of SDC's generally released upgrades and enhancements to that software;

NOW, THEREFORE, the parties mutually agree as follows:

1. DEFINED TERMS.

The following capitalized terms have the meanings set forth below whenever they are used in this Agreement:

(a) Documentation. "Documentation" means electronic on-line material, including user manuals, provided by SDC for the Software that relate to the functional, operational, or performance characteristics of the Software.

(b) Error. “Error” means any defect or condition inherent in the Software that causes the Software to fail to perform in accordance with the current Documentation provided by SDC.

(c) EULA. “EULA” means the ~~OnBase~~ End User License Agreement executed by Licensee to obtain a license to several SDC software modules and any written amendments and modifications to that Agreement that are binding on Licensee.

(d) Holidays. “Holidays” means the days set aside as holidays by the US Government, as amended from time to time.

(e) Maintenance Services. “Maintenance Services” means all professional services provided under this Agreement by Service Provider assisting Licensee in identifying bugs in the Software (as defined below) to be fixed by installing upgrades and enhancements to the Software and providing help-desk services. The Service provider will provide the Maintenance Services described in Section 2(d).

(f) Software. “Software” means (1) the current released version of the computer software licensed by Licensee from Hyland Software, Inc. from time to time under the EULA (the initial list of which is included on Exhibit A attached hereto), and (2) at any time after Service Provider has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this Agreement, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Hyland Software, Inc. first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.

(g) Support Services: “Support Services” means professional services provided by Service Provider assisting in the resolution of Licensee’s errors in use of the software, responding to Licensee’s questions on the use of the Software, providing consulting services, helping Licensee augment its use of the System, by, for example, adding new document types, applications, or indexing capabilities, but will not include any alteration or modification of the Software.

(h) Upgrades and Enhancements. “Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes, and additions to the Software that SDC commercially releases to its end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Software; provided, however, that the foregoing will not include new, separate product offerings, new modules, ~~re-platformed~~ Software, or new functionality.

2. MAINTENANCE AND SUPPORT SERVICES.

(a) Generally. Service Provider will promptly after receipt of proper written or electronic mail notice from Licensee, in accordance with Section 4(c) of this Agreement and Service Provider’s current Error

reporting procedures: (1) use its best efforts to correct any properly reported Error(s) in the Software confirmed by SDC in the exercise of their commercially reasonable judgment; and (2) upon the request of Licensee, provide technical support and assistance and advice related to the operation and use of the Software by Licensee. Service Provider will report the suspected Error to SDC for confirmation. Service Provider will attempt to correct confirmed Errors within 4 normal hours after receiving confirmation from SDC of the Error.

(b) Availability of Maintenance Services and Support Services. Service Provider will provide Maintenance Services and Support Services during the hours of 8:00 a.m. to 8:00 p.m., Eastern Standard Time, Monday through Friday, excluding Holidays ("normal hours"). Licensee understands that Service Provider will first attempt to resolve any problem by telephone. Service Provider will next attempt to resolve the problem remotely. Service Provider will only be required to provide on-site Maintenance Services and/or Support Services in accordance with Sections 2(b) and 2(e) after telephone and remote support have not resolved the problem. If Licensee experiences a Level I Error (as defined below) situation outside of normal hours, Licensee may contact Service Provider 24 hours per day, seven days per week, by calling Service Providers regular telephone Maintenance Services number (866-590-5545) and using Service Providers after-hours paging system. Service Provider reserves the right to notify Licensee that it is making unauthorized (an Error that cannot be categorized as a Level I Error) use of after-hours Maintenance Services and to terminate the provision of after-hours Maintenance Services. Licensee will be informed by Service Provider or SDC at the time of a call if that call is considered an unauthorized call (and will be informed of the reasons supporting such determination) and Licensee will have the opportunity to request a review of the determination or terminate the call and delay Maintenance Services until normal hours on the next business day. Support Services will only be available during normal hours unless otherwise agreed to in writing.

(c) Service Provider and SDC Access. Licensee acknowledges and agrees that Service Provider and SDC require on-line access to the Software installed on Licensee's systems in order for Service Provider and SDC to provide Maintenance and Support Services. To provide the necessary access, Licensee will install, secure, and maintain, at Licensee's sole cost and expense, a virtual private network (VPN) connection, or functional equivalent similar GoToMeeting or GoToAssist, to facilitate Service Provider's on-line Maintenance Services and/or Support Services.

(d) Response to Failures, Access Problems and Errors. Licensee's providing Service Provider with a written Error Report is a prerequisite to Service Provider's responding to system failures, access problems, performance failures, and Errors. The Error Report must include a written or electronic mail explanation of the software routines employed when the problem occurred, and any available documentation of the Error, including, but not limited to, screen prints of all system errors, error messages, time of error, and any other information Service Provider reasonably requires. Reasonably promptly after Service Provider receives the Error Report, Service Provider will cooperate with Licensee in assigning an appropriate level and time of

response to the situation and Service Provider personnel to assist Licensee in solving the problem. Licensee should refer to the Customer Support Guide for additional details on receiving assistance from the Service Provider. The levels of problems, response times, and descriptions of the response for the levels of problem are described in the following subparagraphs of this sub-section (d):

(1) Urgent / Level I

(A) Definition. Complete system failure and/or critical business function failure.

(B) Response. Service Provider will respond within two working hours after the later of receipt of the Error Report and agreement that this Level of response is needed and will assign resources within four working hours with Service Provider Professional Services Staff (hereinafter PSS) involvement until resolution. If hardware fails Service Provider will provide PSS support within two working hours after Licensee's Servers become operational.

(2) High / Level II

(A) Definition. No system failure, but Licensee-users are unable to access or execute critical system functions.

(B) Response. Service Provider PSS will respond to Licensee within four working hours of receipt of the Error Report and agreement to this Level and will use best efforts to restore access within three working days.

(3) Normal / Level III

(A) Definition. Application not performing per documentation but Licensee user can perform basic job functions with alternate procedures.

(B) Response. Service Provider will respond within six hours of Service Provider's receipt of the Error Report. Service Provider will provide fixes within a reasonable time and Licensee will be informed when fixes will be provided.

(4) Low / Level IV

(A) Definition. Application performing per documentation but Licensee has question to change basic job functions or seek guidance on alternate procedures.

(B) Response. Service Provider will respond within one working day of Service Provider's receipt of the Error Report. Service Provider will provide fixes within a reasonable time and Licensee will be informed when fixes will be provided.

(e) On-Site Services. Upon Licensee providing remote access and a reasonable written request following Service Provider's reasonable efforts to resolve the problems by telephone or remotely, and submission of an Error Report, Service Provider will provide on-site Maintenance Services at Licensee's facilities in connection with the correction of any Error(s) involving a critical function of the Software that is not functioning in a production environment. On-site Maintenance Services and/or Support Services will commence as soon as feasible, after Service Provider receives the Error Report, but in no event more than two business days after Service Provider's receipt of the Error Report. "Licensee may purchase additional on-site Support Service, if desired, in accordance with Section 5(c).

(f) Improper Maintenance or Use. Service Provider is not responsible for providing, or obligated to provide, Maintenance Services and/or Support Services or Upgrades and Enhancements under this Agreement if: (1) the Software has been altered, revised, changed, enhanced or modified in any manner that was not authorized in writing in advance by SDC; (2) the Error has been previously corrected by Service Provider or SDC; (3) the Error or problems have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third-party software (other than third-party software bundled with the Software by SDC), hardware or any system or networking utilized by Licensee; (4) the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) any party other than Service Provider or SDC has provided any services in the nature of Maintenance Services and/or Support Services to Licensee with respect to the Software.

(g) Hardware. The service maintenance agreement for any hardware that is used in accordance with the Software, and acquired from Service Provider, will be covered in Addendum A, if applicable.

3. UPGRADES AND ENHANCEMENTS.

(a) Obligation to Provide Upgrades and Enhancements. In accordance with SDC's then current policies, Service Provider will timely provide to Licensee all Upgrades and Enhancements to the Software released by SDC during the term of this Agreement. Licensee acknowledges and agrees that SDC has the right, at any time, to change: (1) the specifications and operating characteristics of the Software and (2) SDC's policies respecting Upgrades and Enhancements and their release to end users. Any Upgrades and Enhancements to the Software and Documentation are proprietary to SDC, are the sole and exclusive property of SDC, and are subject to all of the restrictions, limitations and protections of the EULA. All rights to patents, copyrights, trademarks, other intellectual property rights, applications for those rights and trade secrets in the Software and Documentation and any Upgrades and Enhancements are the exclusive property of SDC.

(b) Completion of Upgrade. If contracted by Licensee to do so under an approved Statement of Work, Service Provider will install upgrades provided to Licensee according to the current established change

management procedures currently in effect by Licensee. Service Provider's obligation to complete the Upgrade ends after Service Provider notifies Licensee in writing or electronic mail that it has completed the Upgrade, and the Software and Upgrade operate without any Errors for 24 hours after that notification is given. This written notice will require acceptance by Licensee by signed form or electronic mail. Service Provider's services including the correction of Errors occurring after its obligation to complete the Upgrade has ended, will be part of its Maintenance and Support Services described in Section 2 and its sub-sections.

4. LICENSEE'S RESPONSIBILITIES.

(a) Operation of the Software. Licensee acknowledges and agrees that it is solely responsible for the day-to-day operation, supervision, management and control of the Software, including, but not limited to, providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database, and for maintaining suitable backups of the data and database to prevent data loss if hardware or software malfunctions. Service Provider and SDC shall have no responsibility or liability for Licensee's selection or use of the Software or any hardware, third-party software or systems.

(b) Licensee's Implementation of Error Corrections and Upgrades and Enhancements. To maintain the integrity and proper operation of the Software, Licensee agrees to implement all Error corrections and Upgrades and Enhancements, in the manner instructed by Service Provider. Licensee's failure to properly implement any Error corrections or Upgrades and Enhancements relieves Service Provider of any responsibility or liability for any failure or malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement. In no event will Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.

(c) Notice and Documentation of Errors. Licensee will provide Service Provider with written or electronic mail notices of any Errors containing the information to be included in the Error Report described in Section 2(d) and any other information required by Service Provider's policy for Error Reports in effect at the time Licensee discovers or learns of an Error.

(d) Access to Premises and Systems. During Licensee's normal business hours (or after hours if agreed to in writing before-hand by both parties), Licensee will allow Service Provider, and if Service Provider retains SDC to assist, SDC reasonable access to and use of Licensee's premises, computer hardware, peripherals, Software and other software as may be necessary to diagnose and correct any Errors or to otherwise provide Maintenance Services and/or Support Services. Licensee will provide that access and use at no cost or charge to Service Provider or SDC.

(e) Copyright and Confidentiality. Licensee agrees that any source code for software created and provided to Licensee by Service Provider is the property of Service Provider. Service Provider retains all rights to copyright and any other intellectual property rights with respect to that software. Licensee further agrees to maintain the confidentiality and not to disclose any of the source code, object code or documentation of that software to anyone and not to use any of that software for any purpose other than operating the Software modules provided under the EULA. Upon termination of this Agreement, the EULA, or the OnBase Software Maintenance Agreement Licensee will retain ownership and full use rights of the then purchased and licensed Software modules without rights to copy, distribute, or modify the source code, object code or documentation to that software.

5. FEES, PAYMENTS, CURRENCY AND TAXES.

(a) Annual Maintenance Fees.

(1) Generally. Licensee will pay Service Provider Annual Maintenance Fees in accordance with the Annual Maintenance Fee Schedule included in Exhibit A attached hereto. Upon written notice to Licensee, Service Provider will adjust the Annual Maintenance Fee for the subsequent terms of this Agreement as a percentage of the retail price of a module as charged by SDC. Service Provider will not have any obligation under this Agreement unless, and until, Licensee submits a written purchase order for this Agreement on Licensee's form, in the amount of the initial annual maintenance fees simultaneously with Licensee's submission of its purchase order for the license of the Software under the EULA. Simultaneously with Service Provider's invoicing of Licensee for the license fees associated with the licensing of the Software under the EULA, Service Provider will invoice Licensee for the initial annual maintenance fees for a period of 12 months starting on the date SDC issues license codes for the Software to Licensee ("Commencement Date"). That invoice is payable within 30 days after the Commencement Date. Service Provider will invoice Licensee for subsequent annual maintenance fees before the end of the then-current term of this Agreement. If any term of this Agreement for which Annual Maintenance Fees are payable is less than 12 calendar months, the maintenance fees for that term will be the product of: (a) the Annual Maintenance Fee Service Provider charges for a full calendar year of service times (b) a fraction whose (i) numerator is the amount of full or partial calendar months remaining from the end of the then-current term of this Agreement through, and including the end of the calendar year in which the end of the then-current term of the Agreement occurs and whose (ii) denominator is 12.

(2) Time for Payment. Licensee will pay all invoices for Annual Maintenance Fees for the upcoming year in full 10 days before the last day of the then-current term of this Agreement. Licensee will pay the invoice for the maintenance fee for the period beginning on the anniversary of the Commencement Date and ending on the last day of the calendar year in which that anniversary occurs on, or before the date of that anniversary. In the event the Licensee does not remit payment for Annual Maintenance Fees as above, they shall not be entitled from the date of the anniversary, to any support or access to any SDC programs.

(b) Support Services Fees

(1) Generally. Licensee will pay Service Provider Support Fees in accordance with the current Service Provider Schedule of Fees.

(2) Time for Payment. Service Provider will invoice Licensee upon close of issue.

(c) Incidental Costs and Expenses. Licensee is responsible for all incidental costs and expenses reasonably incurred by Service Provider solely in connection with the performance of this Agreement provided that those costs and expenses are approved by Licensee before Service Provider incurs them. Examples of incidental costs and expenses include, without limitation, all costs and expenses for tools, supplies, accessories, media and other expendables purchased or otherwise used by Service Provider solely in connection with the performance of this Agreement, on-line connection charges and out-of-pocket expenses incurred at Licensee's request, including, but not limited to, reasonable travel, meals and lodging expenses for on-site Support Services. Service Provider shall invoice Licensee for those incidental costs and expenses. Licensee will pay those costs within 30 days of the date of Service Provider's invoice for those costs.

(d) U.S. Dollars. Licensee's payments will be made in U.S. dollars.

(e) Taxes and Governmental Charges. Licensee will also pay all taxes and governmental charges, however designated, that are levied or imposed by reason of the transactions described in this Agreement, including, but not limited to, sales and use taxes, excise taxes, and customs duties or charges, but Licensee will not be required to pay Service Provider's franchise taxes or any taxes on Service Provider's income.

6. REMEDIES.

All past due amounts bear interest at the rate of one and one-half-percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that the past due amounts and accrued interest are paid in full. If Licensee defaults in paying any amounts due, and that default continues for at least 30 calendar days after the due date, Service Provider has the right to cease to provide any Support Services, Maintenance Services, and Upgrades and Enhancements to Licensee unless and until the default, and any and all other defaults by Licensee under this Agreement, are cured. This remedy is in addition to any other remedies that Service Provider has in law or in equity.

7. LIMITED WARRANTY.

(a) Limited Warranty of Services. Service Provider warrants that the Maintenance Services and Support Services it provides will be performed in a good and workmanlike manner and consistent with industry standards. In order to assert any claim that any Maintenance Services and/or Support Services fail to conform to this limited warranty, Licensee must notify Service Provider in writing of its claim within **90 days** after the date the alleged non-conforming Services are completed. If, after timely notice from Licensee, the Maintenance Services and/or Support Services in question are determined not to conform to this limited warranty, Service Provider's sole obligation, and Licensee's sole remedy, is for Service Provider to use commercially reasonable efforts to re-perform the nonconforming Services in an attempt to correct the nonconformity. If Service Provider is unable to correct the nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy is termination of this Agreement in accordance with Section 9(b)(3)(B). This warranty specifically excludes non-performance issues caused as a result of any circumstances described in Section 2(f), incorrect data or incorrect procedures used or provided by Licensee or a third party or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

(b) No Warranty of Upgrades and Enhancements. The EULA governs any limited warranty or disclaimers relating to the Software itself and Upgrades and Enhancements of the Software provided to Licensee under this Agreement; no warranty is given under this Agreement with respect to Upgrades and Enhancements. Service Provider's warranties in this Agreement relate solely to services provided under this Agreement and the warranties of the Software or the Upgrades and Enhancements, if any, are warranties of SDC either in the EULA or in another writing expressly authorized by SDC.

(c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7(a), SERVICE PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE SERVICES OR SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. SERVICE PROVIDER DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SERVICE PROVIDER DOES NOT WARRANT THAT ANY MAINTENANCE SERVICES AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. SERVICE PROVIDER DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

8. LIMITATIONS OF LIABILITY.

SERVICE PROVIDER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO SERVICE PROVIDER UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. SERVICE PROVIDER AND SDC WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING THAT INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF SERVICE PROVIDER OR SDC HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

9. TERM, RENEWAL AND TERMINATION.

(a) Term. Subject to the early termination provisions of Section 9(b), the initial term of this Agreement (the "Initial Term") commences on the Commencement Date and expires on the first anniversary of that date; but, except as otherwise provided in below, the term of this Agreement will be renewed: (1) at the end of the Initial Term, for a period from the first day after the end of the Initial Term through December 31 of the calendar year in which the Initial Term ends; and (2) thereafter, annually for each succeeding calendar year unless terminated in accordance with this Section 9.

(b) Early Termination.

(1) Automatic. This Agreement terminates automatically, without any other or further action by either party, immediately upon any termination of the EULA.

(2) By Service Provider For Cause. Service Provider may give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of the breach or non-compliance and requiring Licensee to cure the breach or non-compliance. In addition to any other rights it may have under this Agreement or at law or in equity, Service Provider may terminate this Agreement if: (A) in the case of non-payment, any breach of Section 1 of the EULA or any breach of Section 3 of this Agreement Licensee has not cured the breach or non-compliance within 15 calendar days after receipt of that written notice; or (B) in the case of any other breach or non-compliance Licensee has not cured the breach or non-compliance within 30 calendar days after receipt of that written notice.

(3) By Licensee.

(A) Non-Renewal. Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Service Provider 60 calendar days before the end of the then-current term of this Agreement. If notice is NOT received then this agreement automatically renews on the expirations date. (B)

(c) Effect of Termination.

(1) Payments. Notwithstanding any termination of this Agreement, Licensee must pay Service Provider for: (A) all Maintenance Services and Support Services provided on a time and materials basis on or prior to the effective date of termination; (B) all Annual Maintenance Fees due with respect to any period commencing prior to the effective date of termination; and (C) all incidental costs and expenses incurred by Service Provider at any time on or prior to the effective date of termination. All those payments will be made in accordance with Section 5, which shall survive any such termination for these purposes.

(2) Survival of Obligations. The termination of this Agreement will not discharge or otherwise affect any obligations of either party existing under the Agreement before, or at the time of termination. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 5(e), Section 7(c), Section 8, Section 9, Section 10, Section 11 and Section 12. No action arising out of this Agreement regardless of the form of action may be brought by Licensee more than one year after the date the action accrued.

(3) Reinstatement of Agreement. If this Agreement is a reinstatement of a previously terminated agreement between Service Provider and Licensee, then this Agreement will not become effective and Service Provider will not be obligated to perform it unless and until Licensee delivers written notice of its desire to reinstate to Service Provider, together with payment in full of: (A) annual maintenance fees, based upon Service Provider's Annual Maintenance Fee Schedule in effect when Service Provider receives the notice of Licensee's desire to reinstate applied to all renewal periods (as determined under Section 9(a) of this Agreement as if the previous Agreement had not been terminated) that have elapsed from the effective date of termination through the effective date of reinstatement; and (B) an amount equal to 110% of the Annual Maintenance Fee, based upon Service Provider's Annual Maintenance Fee Schedule in effect as of the time of the reinstatement, for the renewal term of this Agreement commencing on the effective date of that reinstatement. Any reinstatement under this Section 9(c) (3) becomes effective as of the first business day after

Service Provider has received the notice of reinstatement and all required payments. The renewal term commencing with the effective date of this Agreement will be for a period ending on the first annual anniversary of the effective date of the reinstatement; and thereafter the term of this Agreement will be renewed: (i) at the end of that first renewal term, for a period from the first day after the end of that first renewal term through December 31 of the calendar year in which such first renewal term ends; and (ii) thereafter, annually on a calendar year by calendar year basis.

EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 9(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

10. FORCE MAJEURE.

No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) is a default or breach to the extent that the failure to perform, delay or default arises out of a cause, existing or future, beyond the control of the party ("**Force Majeure**"). (A Force Majeure includes, but is not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; acts of terrorism; or the act, negligence or default of the other party) but only to the extent the delay does not result from the negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon Force Majeure to excuse failure, default or delay in performance will, when the cause arises, give other party written or electronic mail notice of the facts that constitute Force Majeure; and, when the Force Majeure ceases to exist, give prompt notice of that cessation to the other party. This Section 10 shall in no way limits the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 10 for longer than 90 calendar days, the other party, by written notice given during the postponement or extension, and at least 30 calendar days prior to the effective date of termination, may terminate this Agreement.

11. NOTICES

All communications or notices required or permitted to be given or served under this Agreement shall be in writing and shall be deemed to have been duly given or made if: (a) delivered in person or by courier (e.g., Federal Express), (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested to the intended recipient at the address and/or the telecopy number set forth below:

Service Provider:

Confidential

Page 12

3/26/2018

DataBank IMX, LLC
 Attn: CFO
 620 Freedom Business Center
 King of Prussia PA 19406
 Fax (866) 910 6513

Licensee:

Business: _____

Address: _____

Address: _____

Fax: _____

All communications and notices shall be effective upon delivery in person or by courier, or after being deposited in the United States mail. Any party may change his, her, or its address by giving notice in writing, stating his, her or its new address and/or telecopy number to all of the other parties in the foregoing manner.

12. GENERAL PROVISIONS.

(a) Choice of Law. The enforcement, performance, discharge, lack of performance, and formation of this Agreement is governed by, and construed and enforced in accordance with, the law of the State of Delaware regardless of any conflict-of-law rules to the contrary.

(b) Jurisdiction. Any action, suit or proceeding arising out of this Agreement must be brought and maintained in one of the federal or state courts of general jurisdiction located in Delaware but the prevailing party may enforce any judgment rendered by one of those courts in any court that has personal jurisdiction over the judgment debtor.

(c) Interpretation. The headings used in this Agreement are for reference and convenience purposes only and will not in any way limit or affect the meaning or interpretation of any of its terms. All defined terms in this Agreement are deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby," "hereinafter" and similar terms refer to all provisions of this Agreement.

(d) Waiver. No waiver of any right or remedy on one occasion by either party is a waiver of that right or remedy on any other occasion.

(e) Integration. This Agreement, including any and all exhibits and schedules referred to herein set forth the entire agreement and understanding between the parties pertaining to its subject matter and merges all prior discussions between them about that subject matter. Neither party is bound by any condition, definition, warranty, understanding or representation with respect to the subject matter of this Agreement if it

is not in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement is not to be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

(f) Binding Agreement and Assignment. This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Service Provider may not assign this Agreement or its rights or delegate its obligations under this Agreement, in whole or in part, to any other person or entity without the prior consent of the Licensee. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Service Provider. Any assignment made without compliance with the provisions of this Section 12(f) is null and void and of no force or effect.

(g) Severability. If any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, that court has the power and is hereby authorized and directed, to limit the scope, duration or area of applicability, or all of them of that term or provision, so that it is no longer overly broad and to enforce the provision as limited by that court. Subject to the preceding sentence, if any provision of this Agreement is held to be invalid or unenforceable for any reason, the invalidity or unenforceability will apply only to that provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

(h) Independent Contractor. The parties acknowledge that Service Provider is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance Service and Support Services.

(i) Third Party Beneficiary. Licensee and Service Provider acknowledge and agree that SDC is an express third-party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the full extent of the law as if SDC were a party to this Agreement. SDC shall be afforded all remedies available to any party to this Agreement under the terms hereof or under applicable law. There are no other third-party beneficiaries to this Agreement.

(j) Export. Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Upgrades and Enhancements are not exported in violation of United States law.

(k) U.S. Government Restricted Rights. The Software and Upgrades and Enhancements are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of the rights in Technical Data and Computer Software clause at

DFAR 252.227-7013 and the Commercial Computer Software Restricted Rights FAR 52.277-19(c)(1) and (2), as applicable. Manufacturer is Hyland Software, Inc., 28500 Clemens Road, Westlake, Ohio 44145.

(l) Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for either party's protection and, accordingly, each party shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement against the breaching party.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

DataBank IMX

Company Name ("DataBank")

Company Name ("Customer")

By (Signature)

By (Signature)

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

____ / ____ / ____

____ / ____ / ____

Dated

Dated

EXHIBIT A

SOFTWARE MODULES	ANNUAL MAINTENANCE FEES
SUPPORT SERVICES	
Per Hour + T&E	
Per Day + T&E	

*Below is the word attachment for the DataBank Customer Agreement shown above.



Customer
Agreements - DataBank

EXHIBIT B
TO
PURCHASE AND SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
DATABANK IMX LLC

[Statement of Work and Fee Proposal]

See following pages.



STATEMENT OF WORK

TOWN OF CHINO VALLEY
ONBASE IMPLEMENTATION – PHASE 1
8/22/2018

Prepared by: Tim Nelson
DataBank IMX
www.databankimx.com

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1. Version Control

Document Attributes

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0.1	8/22/2018	Tim Nelson	Initial draft

RACI Chart

Name	Position	*	R	A	S	C	I
Heath Tagtmeyer	DataBank – Regional Sales Director	X		X	X		X
Adam Herrmann	DataBank – Director of Professional Services			X	X		X
Alan Givens	DataBank – Regional Manager of Professional Services				X		X
Tim Nelson	DataBank – Bid Manager		X				X
Tracy Flores	DataBank - Account Manager				X		X
Spencer Guest	Town of Chino Valley - Project Sponsor	X				X	X
Column Key	* – Authorize: This individual has ultimate signing authority for any changes to the document and will be responsible for signing the Master Agreement R – Responsible: Person responsible for creating this document. A – Accountable: Person accountable for accuracy of this document. S – Supports: Individuals providing supporting services in the production of this document. C – Consulted: Individuals providing input (interviewee, etc.). I – Informed: Individuals who must be informed of any changes.						

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2. Introduction/Overview

Town of Chino Valley (hereinafter “Client”) is seeking to implement an Enterprise Content Management (ECM) solution with advanced technology that is secure, accurate, manageable, and auditable. The identified solution will provide the ability to capture, store, and retrieve documentation. The technology will be continually leveraged and expanded in a phased approach to improve business processes with the result of enhancing service to clients while contributing to the fiscal bottom line.

Client has chosen OnBase as the new solution and will be leveraging DataBank IMX (hereinafter “DataBank”) to design, implement, and support the first phase of the solution. The departments in Phase 1 will include:

1. Clerk’s Office
2. Finance
3. Management Information Systems
4. Town Manager
5. Customer Service
6. Development Services

3. Objective

The objective of this document is to present the project scope, deliverables, assumptions, and professional service estimates for implementing the solution at Client. It will also serve to solicit approval from Client to move ahead with the described activities upon receipt of a signed copy.

4. Scope of Services

The scope of this project consists of planning, discovery, design, development, testing, training, and deployment activities associated with the implementation of this project. Installation and/or configuration of OnBase components not listed or that exceed the documented numbers will require an approved change order.

The scope of this initiative will be limited to DataBank performing the following activities:

Activity	Description
Discovery & Design	▪ Conduct Discovery sessions with Client Subject Matter Experts (SMEs) and technical experts from IT to identify business and technical requirements ▪ Draft Solution Design Document (hereinafter “SDD”) and review with Client ▪ Client sign off on SDD
Development	▪ OnBase Infrastructure Setup ▪ Module Installation ▪ Dept/User/Profile Setup ○ Up to 3 user roles profile per Dept ○ Active Directory groups sync setup ○ Authentication via AD user profile ▪ Basic OnBase Configuration ○ Document type groups (up to 6) ○ Document types (up to 15) per group ○ Keywords (up to 10) per doc type ○ External Autofill Values (up to 4)

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Activity	Description
	▪ Integration with 3rd Party Lines Of Business (LOB) ○ Up to 3 Departments ○ Internal and External Autofill Applications (up to 3) ○ Import files from LOB (up to 3) ▪ Document Import from 3rd Party Applications ○ Document Import Profiles (up to 2) ○ Automated Import Schedulers (up to 2) ▪ Scan Queue Process Setup ○ Scan Queue Profiles (up to 5) ○ Desktop Imaging Sweep Processes (up to 5) ▪ EDM Setup ○ Doc Type revision/version profiles (up to 45) ▪ Configure HTML Forms (non-programming) ○ Custom Queries (up to 5) ○ Custom Query Profiles (up to 5) ○ Standard Retrieval Window ○ Full Text Search Query ▪ Configure Autonomy IDOL ○ Full Text Document/Group Profiles (up to 5) ○ Setup 2 Full Text Catalogs for Clerk's Office ▪ Configure Outlook Integration ○ Folder Profiles (up to 5) ○ One Click Deployment Install Pushouts (up to 5) ▪ Development review and solution demonstrations
Testing	▪ Create a test plan which will identify the testing cycles, dates, and assignments ▪ Perform unit testing for basic OnBase functionality such as user login, scanning, retrieval, and storage ▪ Create test scripts for Quality Assurance Testing (hereinafter "QAT") ▪ QAT assistance and issue resolution
Training	▪ QAT training ▪ Admin training ▪ Create training materials ▪ End user training
Production Deployment	▪ Migration of solution to production ▪ Go-live support ▪ Create Client System Information document ▪ Transition to support
Project Management	▪ Set up the project in the internal PSA system ▪ Coordinate DataBank technical team personnel and schedules ▪ DataBank will schedule a project kick-off meeting to introduce project resources and review the project plan with Client ▪ Ongoing planning and coordination ▪ Lead weekly status meetings with the project team ▪ Preparation of weekly status reports

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Activity	Description
	- Status reporting to Client project manager - Project Plan management - Close management on project scope and limitation of change order requests

The following items have been discussed but are considered **out of scope** for this project:

Activity	Description
Implementation of OnBase in departments other than those listed in Phase 1	Activities related to the implementation of OnBase in departments other than those listed in Phase 1 are out of scope and will require an approved change order.
Data Conversion	Work outlined in this SOW does not include data conversion from existing or legacy systems to OnBase. Out of scope items would include, but not limited to: data related to integration, content stored in other repositories, etc. If this is desired, an approved change order will be required.
Custom Interfaces	Standard OnBase interfaces will be leveraged for this project. Customized web front-ends, applications, or web services are not in scope and will require an approved change order.
Activities not listed	Activities not listed in the in scope statement will require a change order.

5. Schedule / Period of Performance

The following table specifies the allowable time for project Activities. Schedule delays due to factors outside of DataBank control may result in a change order. Duration is based on standard work week of Monday through Friday. A DataBank project manager will be engaged for the full duration of the project.

Phase	Hours	Duration
Discovery & Design	44.0	3 weeks
Implementation	330.0	12 weeks
Total Project Duration	285.0	15 weeks

6. Compensation and Payment Schedule

DataBank will charge and bill services fees to Client for the Professional Services provided under this SOW in the following manner:

1. Time and Materials will be billed semi-monthly

Other than when payment terms are specifically delineated in a Master Services Agreement, Client agrees to pay for all services and products within thirty (30) days of receipt of an invoice from DataBank.

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7. Pricing Breakdown

7.1 Software/Maintenance

Description	Price for Each	Quantity	Total Price
Local Government Licensing Bundle (Multi-User Server, Unity Client with combined viewer, EDM Services, Application Enabler, Full Text Search and Virtual Print Driver)	\$20,000.00	1	\$20,000.00
Multi User and Unity Client included in Bundle		1	\$0.00
EDM Services included in Bundle		1	\$0.00
Full Text Search included in Bundle		1	\$0.00
Local Government Concurrent Client	\$650.00	10	\$6,500.00
Local Government Integration for MS Outlook	\$4,000.00	1	\$4,000.00
Desktop Document Imaging	\$500.00	3	\$1,500.00
Document Import Processor	\$5,000.00	1	\$5,000.00
Annual Maintenance (20%)			\$7,400.00
Total Software			\$44,400.00

7.2 Professional Services Fees (Estimate) – Time and Materials

The following is a summary of the estimated costs for professional services by project stage. The services provided under this SOW will be delivered on a time and materials basis.

Phase	Hours	Rate	Total Estimate
Discovery & Design	44.0	\$185.00	\$8,140.00
Development	104.0	\$185.00	\$19,240.00
Testing	32.0	\$185.00	\$5,920.00
Training	28.0	\$185.00	\$5,180.00
Production Deployment	24.0	\$185.00	\$4,440.00
Project Management	43.0	\$185.00	\$7,955.00
Sub-Total	275.0	\$185.00	\$50,875.00
Travel & Expenses	N/A	N/A	\$4,985.00
Contingency Reserve (20%)	54.0	\$185.00	\$9,990.00
Grand Total	329.0	\$185.00	\$65,850.00

All estimates of fees or time required to complete the project are **approximations** of the anticipated amount of time needed to complete the project. Client will be invoiced based on the amount of time actually required to complete the project.

It is important to note that scope can change throughout the lifecycle of a project requiring the use of DataBank's change order process.

7.3 Totals

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Description	Total
Software/Maintenance	\$44,400.00
Professional Services	\$65,850.00
Total	\$110,250.00

8. Services Rendered and Timeline Estimation

The parties agree that any services described in this SOW that have been performed prior to the execution of this SOW by the parties nevertheless shall be covered by all terms and conditions of this SOW.

9. Travel & Expense Policy

9.1 Trip Charge

If travel is required, charges associated with travel to and from Client site(s) are invoiced as a flat-rate trip charge. The standard trip charge will be \$650.00 per resource regardless of the method of travel and/or distance (i.e., mileage, airfare, etc.).

9.2 Estimated Expenses

Other recoverable expenses such as lodging, meals, car rental, and parking will be billed back to Client based on a daily per diem of \$265.00 per resource. The **actual** expenses will be itemized on the invoice.

10. Non-Standard Time Policy

Professional Services are considered non-standard time if they belong to one of the following situations:

1. Work is being performed in the same time zone as DataBank Headquarters (CST) and the work falls outside of the standard business hours (Monday – Friday, 8:00 AM – 5:00 PM).
2. Work is being performed in a different time zone other than that of DataBank Headquarters (CST) and the work falls outside the hours of (Monday – Friday, 8:00 AM – 5:00 PM) in said time zone.

In certain circumstances, DataBank will perform work outside of standard business hours. DataBank will only charge a premium when Client has requested that work be performed outside of standard business hours (see above for location and/or hours details). Premium rates are billed at 1.50 times the quoted services rate.

11. Change Order Policy

Change orders will be utilized for all scope changes not specifically stated in the in-scope section of this SOW, if the schedule changes from the defined schedule in this SOW, or project assumptions listed in this SOW are not met. This includes billable and non-billable project changes. Purchase orders will be required for all mutually agreed upon billable changes. Any change orders that are agreed upon during the deployment phase can affect the project schedule. The project schedule will be updated and approved by Client as part of the change order process.

12. Non-Solicitation of Employee(s) Policy

The parties agree that during the term of the agreement and for three years thereafter, they shall not solicit or encourage, or cause others to solicit or encourage, any of the other party's' employees or contractors or any affiliate to terminate their employment or engagement. Each party shall not, directly or indirectly, hire any then-current or former employee or contractor of the others and shall not solicit any then-current Client or an affiliate or any prospective Clients made known to it by the other party for any business relating to in anyway,

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the business of the party or otherwise interfere with the business relations between the party and any such Clients.

13. Required Documentation

The following documents are required prior to DataBank scheduling the start of the project and prior to any work being performed.

1. Purchase Order
2. Signed Statement of Work

14. Client Responsibilities

Client agrees that the following actions and project requirements will be solely owned and completed/provided by Client staff and Client resources. Failure to complete actions will directly impact the project start date, project schedule and project success. Any requirements or Client responsibilities not provided during the project will result in a change order to account for increased project schedule, increase resource expenses, and increased operating expenses.

14.1 Required Prior to Project Start

DataBank resources will be assigned to the project and engaged in project activities beyond the initiation meeting once all of the following requirements have been met by the Client.

1. All applicable system servers are installed, tested, and properly working
2. All applicable operating software is installed, tested, and working properly
3. A network account with rights to the network and hardware is set up and made available to DataBank for both onsite and remote work.
4. Client will download all applicable OnBase software and place the software in a directory on the server(s) it will be installed on.
5. A work space will be made available for DataBank resources to perform the work described in this SOW. The space will be a physical space if work is performed on-site. The space will be remote machines if the work is performed remotely.
6. Client will provide project staff with access to all printed and electronic information relevant to this project at the beginning of the project.
7. Client will assign a project manager or lead resource to manage the day-to-day activities related to the project. This will include ongoing project planning, schedule coordination, and issue escalation in order to meet all milestones/requirements.

14.2 Required During Project

Client will provide the following during the project.

1. Client will maintain and keep available all line items listed as requirements prior to project start.
2. Client will manage/schedule its own resources during the project.
3. Client will test the deployed solution as defined within the SDD.
4. Client will document all issues/change requests as part of the Client testing process.

15. Project Assumptions

The following Assumptions are paramount to the defined scope and schedule for this project. Any variables in the project found to not match the listed assumptions will be documented by DataBank project manager as a project risk. A change order will be required for any variables that do not match the project assumptions and that impact the project deliverables, project schedule or project expenses.

1. A signed SDD is received by DataBank prior to scheduling development and deployment.

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2. DataBank will deploy the solution as agreed upon in the final SDD, signed by all parties.
3. DataBank will deploy the solution in Client's test environment, unless agreed upon by both parties prior to deployment.
4. An up-to-date test environment that closely resembles the production environment is in place prior to deployment. If Client chooses not to establish a test environment, they understand that the system/solution will be deployed into their production environment.
5. DataBank will test the system to assure that it matches the final SDD prior to training.
6. DataBank will perform QAT training and assist with QAT prior to formal training. Any issues or project gaps must be identified, documented and communicated to DataBank project manager at the time of QAT.
7. Client test system will reflect permissions, system restrictions, user accounts, etc. identical to those implemented in the production environment.
8. DataBank will provide formal testing support as defined within the SDD. Any additional testing support requirements are subject to the change order process.
9. During Client testing, the only issues that will be considered to be addressed are those that impact system performance. All other changes will be evaluated at the completion of testing.
10. DataBank will deploy the system into production once it is functioning per the SDD and any negotiated change orders.
11. DataBank will manage/schedule its own resources during the project.
12. Both parties will attend up to 1 project status meeting per week throughout the duration of the project. Attendance will be via remote conference call unless other requirements are agreed upon by both parties prior to acceptance of the SDD. Additional project status requirements are subject to applicable project management fees.
13. DataBank assumes no liability or responsibility for any changes made in the production environment that are not made by a DataBank employee.
14. The Professional Services estimate includes a 20% contingency reserve to account for change orders and additional requests. If the contingency reserve is not used, Client will not be invoiced for the additional 20%.
 - The contingency reserve can be used to fulfill additional requirements found during the project lifecycle.
 - The contingency reserve is in place to cover change orders and keep the project moving forward.
 - An official change order will be created and signed prior to using hours from the contingency reserve.
15. Client has up to 15 days from the Go-Live Date to "Accept" the deployed solution. In the absence of documented exceptions or a signed Work Acceptance document, the solution will be deemed accepted and the project will be closed 15-days subsequent to delivery of the Acceptance document. The go-live date will be set and documented by the DataBank project manager and agreed upon by Client prior to performing Production Deployment as defined in the Scope of Services section in this SOW.
16. After the solution goes live, DataBank will coordinate a "handoff to support". Any issues identified after this handoff will be treated as support issues and fall under the DataBank Hardware/Software Maintenance agreement terms and conditions.
17. Software Manufacturers occasionally publish a schedule that indicates which versions or functionality is no longer supported or being phased into an end-of-life status. DataBank assumes that Client is taking responsibility for monitoring such end-of-life, deprecation, or sunset schedules and taking necessary precautions. If DataBank encounters a condition in the course of its project work that requires action or modification to resolve such an issue, it may result in a change order.
18. DataBank resources will perform work unimpeded by Client staff monitoring, shadowing, or Client driven remote technology where DataBank resources are limited by client staff availability. A request

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to monitor/shadow DataBank resources, while welcomed, does impede resource efficiency which has a direct impact on the duration of the project and time needed to complete the project. A change order will be required to cover the increased project time that results from resource monitoring.

19. Change orders will be utilized for all scope changes not specifically stated in the in-scope section of this document. This includes billable and un-billable project changes. Purchase orders will be required for all mutually agreed upon billable changes.
20. Any change orders that are agreed upon during the deployment phase can affect the project schedule. The project schedule will be updated and approved by Client as part of the change order process.

16. Binding Affects and Agreements

This SOW shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign its rights or obligations under this SOW, in whole or in part, to any other person or entity without the prior written consent of the other party. Any change in control resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this section shall be null and void and of no force or effect.

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17. Acceptance of SOW

This SOW represents DataBank's offer to perform the project on the terms set forth herein; and this offer shall be accepted only upon Client signing and delivering this SOW to DataBank within 60 days from the date of this document (the "Acceptance Deadline"). DataBank may withdraw this offer at any time prior to acceptance by Client. In any event, this offer shall be void, and shall for all purposes be deemed to have been withdrawn by DataBank, if this offer is not accepted, in the manner provided above, by Client on or before the Acceptance Deadline.

For purposes of this SOW, a signed copy delivered by facsimile or electronically shall be treated by the parties as an original of this SOW and shall be given the same force and effect.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this SOW as of the date(s) set forth with their respective signatures below.

DataBank IMX

Company Name ("DataBank")

By (Signature)

Printed Name and Title

620 Freedom Business Center, Suite 120

Address

King of Prussia, PA 19406

City, State, Zip

___ / ___ / ___

Dated

Town of Chino Valley

Company Name ("Client")

By (Signature)

Printed Name and Title

Address

City, State, Zip

___ / ___ / ___

Dated

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18. Appendix A – QAT Acceptance Form

- ☐ Client acknowledges that Quality Assurance Testing (QAT) has been completed and that the solution has met the specifications identified within the SDD and any subsequent, mutually-signed change orders. No further solution changes will be required before the migration of the solution to the production environment.

Exceptions:

Comments/Reason:

Company Name ("Client")

Project Sponsor Name (Print)

Project Sponsor Signature

Date

**Software End User License Agreement
(Domestic Version)
IMPORTANT- READ CAREFULLY**

This End User License Agreement (“EULA”) is made between Hyland Software, Inc. (“Hyland”), 28500 Clemens Road, Westlake, Ohio 44145 USA, and the Town of Chino Valley (“User”), 202 North State Route 89, Chino Valley, Arizona 86323, with respect to the licensing of the software products or modules listed or described on Exhibit A attached hereto, including , in each case, third party software bundled by Hyland as part of a unified product, and any security device(s) that may be used to protect the Software from unauthorized use (“Software”).

1. LICENSE:

- (a) Subject to payment in full of the Software license fees, Hyland grants to User a perpetual (except as otherwise provided in this EULA), non-exclusive, non-assignable (except as otherwise provided in this EULA), limited license to the Software, in machine-readable object code form only, solely for use by: (i) User internally, and only for capturing, storing, processing and accessing User’s own data; and (ii) subject to Section 1(l) below, by a third party contractor retained by User as a provider of services to User (“Contractor”), but only by the Contractor for capturing, storing, processing and accessing User’s own data in fulfillment of the Contractor’s contractual obligations as a service provider to User. The Software is licensed for use by a single organization and may not be used for the processing of third-party data as a service bureau, application service provider or otherwise. User shall not make any use of the Software in any manner not expressly permitted by this EULA. The Software may be located and hosted on computer servers owned and controlled by a third party. Such third party hosting provider shall be considered a Contractor, and subject to the requirements of Section 1(l) below.
- (b) User acknowledges that each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and that the Software may control such use. Software products that are volume-based may: (i) no longer function if applicable volume limits have been exceeded; or (ii) include functionality which monitors or tracks User’s usage and reports that usage. Upon reasonable notice to User, Hyland shall be permitted access to User’s Software system to measure User’s volume usage of such Software. User acknowledges and agrees that additional fees may apply based on User’s volume usage. User may not circumvent or attempt to circumvent this restriction by any means, including but not limited to changing the computer calendars. Use of software or hardware that reduces the number of users directly accessing or utilizing the Software (sometimes called “multiplexing” or “pooling” software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. User is prohibited from using any software other than the Software Client modules or the Software API modules to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Hyland has given its prior written consent to User’s use of such other software and User has paid to Hyland the Software license fees with respect to such access to the Software or data stored in the Software database in accordance with Hyland Software, Inc.’s licensing policies applicable to the Software modules that provide access to the Software application modules and data stored in the Software database.
- (c) User shall be entitled to use one (1) production copy of each Software module licensed and one (1) additional copy of the Software licensed in User’s production system for customary remote disaster recovery purposes which may not be used as a production system concurrently with the operation of any other copy of the Software in a production environment. In addition, User shall be entitled to license a reasonable number of copies of the Software licensed in User’s production system to be used exclusively in a non-production environment and solely for the purposes of experimenting and testing the Software, developing integrations between the Software and other applications that integrate to the Software solely using integration modules of the Software licensed by User under this Agreement, and training User’s employees on the Software (“Test Systems”). User may be required to provide to Hyland certain information relating to User’s intended use of such Test Systems such as the manufacturer, model number, serial number and installation site. Hyland reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test Systems. User’s sole recourse in the event of any dissatisfaction with any Software used in any non-production system is to stop using such Software and return it to Hyland. User shall not make additional copies of the Software not specifically authorized by this paragraph (c).
- (d) User agrees: (1) not to remove any notices in the Software or Documentation (as defined in Section 4(b)); (2) not to sell, transfer, rent, lease or sub-license the Software or Documentation to any third party; (3) not to alter or modify the Software or Documentation; (4) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Software; and (5) not to prepare derivative works from the Software or Documentation.
- (e) “Beta Software” means either: (1) a complete new version of the Software which is a pre-release version only, is still undergoing development and testing at Hyland and is not a Hyland commercially released product; or (2) a potential new Software module which is included in a commercially-released version of the Software, but which is not available for

commercial licensing by User or Hyland's other customers generally and is still undergoing development and testing at Hyland. From time to time Hyland may make Beta Software available for User's use in the Test Systems; and User may elect to license and use the Beta Software in the Test Systems. Except for the provisions of Section 4(a), (b) and (c) and Section 6 of this EULA, which shall not apply with respect to any Beta Software, User acknowledges and agrees that all Beta Software delivered in accordance with this paragraph shall be considered to be "Software" for all purposes of this EULA. Notwithstanding anything to the contrary, as to any Beta Software, this EULA and the limited license granted hereby will terminate on the earliest of: (1) ten (10) days after the date of delivery by either party to the other party of written notice of termination of the beta testing period for such Beta Software; or (2) the date of Hyland's commercial release of the final version of such Beta Software for licensing to its end users generally. Upon expiration or other termination of such period, User immediately shall discontinue any and all of use of the Beta Software and related documentation and remove or permit Hyland to deactivate the Beta Software. The expiration or termination of this EULA as to any Beta Software shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by User in accordance with the terms of this EULA.

- (f) From time to time User may elect to evaluate certain Software modules that it has not licensed and does not currently use in its production environment ("Evaluation Software"), for the purpose of determining whether or not to purchase a production license of such Evaluation Software. Evaluation Software is licensed for User's use in User's Test Systems. Except for the provisions of Section 4(a), (b) and (c) and Section 6 of this EULA, which shall not apply with respect to any Evaluation Software, User acknowledges and agrees that all Evaluation Software delivered in accordance with this paragraph shall be considered to be "Software" for all other purposes of this EULA. Notwithstanding anything to the contrary, as to any Evaluation Software, this EULA and the limited license granted hereby will terminate on the earliest of: (1) thirty (30) days after the date such Software is activated for use in User's Test Systems; or (2) immediately upon the delivery of written notice to such effect by Hyland to User. Upon expiration or other termination of such period, User immediately shall either (A) discontinue any and all of use of the Evaluation Software and related documentation and remove or permit Hyland to deactivate the Evaluation Software; or (B) deliver payment in full of the Software license fees that have been agreed upon for such Software to Hyland (if User purchases licenses for Software directly from Hyland) or to Hyland's authorized solution provider (if User purchases licenses for Software through such authorized solution provider), and confirm in writing to Hyland that such Evaluation Software is added as additional Software licensed for User's use in its production environment and (and other permitted environments) under this EULA. The termination of this EULA as to any Evaluation Software shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by User in accordance with the terms of this EULA.
- (g) Upon expiration or other termination of any period of use of any Beta Software or of any Evaluation Software that User elects not to purchase a license to for use in User's production environment under this EULA, User agrees that it will provide to Hyland remote access to User's systems on which such Beta Software or such Evaluation Software is installed for the limited purpose of permitting Hyland to deactivate such Beta Software or such Evaluation Software.
- (h) User may not assign, transfer or sublicense all or part of this EULA without the prior written consent of Hyland; provided that Hyland agrees that such consent shall not be unreasonably withheld in the case of any assignment by User of the EULA in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of User's assets that assumes in writing all of User's obligations and duties under this EULA.
- (i) The Software may be bundled with software owned by third parties, including but not limited to those manufacturers listed in the Help About screen of the Software. That third party software is licensed solely for use within the Software and is not to be used on a stand-alone basis. User acknowledges that, depending on the modules licensed, the Software may include open source software governed by an open source license, in which case the open source license (a copy of which is provided in the Software) may grant you additional rights to such open source software. Additionally, in the case of such software to be downloaded and installed on a mobile device, if such software will be downloaded from the application market or store maintained by the manufacturer of the mobile device, then use of such software will be governed by the license terms for the software included at the applicable application store or market or presented to User or User's user in the software, and this EULA will not govern such use.
- (j) The optional AccuZip™ component of the OCR for AnyDoc and AnyDoc EXCHANGEit Software products contains material obtained under agreement from the United States Postal Service (USPS) and must be kept current via an update plan provided by Hyland to maintain User's continued right to use. The USPS has contractually required that the Software include "technology which automatically disables access to outdated [zip code] products." This technology disables only the AccuZip component and is activated only if AccuZip is not updated on a regular and timely basis. Hyland regularly updates the zip code list as part of maintenance and support for the AccuZip module.
- (k) If applicable, Software also includes all adapters created by Hyland and provided to you by Hyland or a Hyland authorized solution provider as part of an integration between the Software and a third party line of business application ("Integration

Code”). Such Integration Code may only be used in combination with the Software and in accordance with the terms of this EULA.

- (l) The parties agree that any use of the Software by any Contractor shall be undertaken only in compliance with this EULA. User shall not allow any Contractor to: (1) make use of the Software configuration tools, Software administrative tools or any of the Software’s application programming interfaces (“APIs”); (2) make use of any training materials or attend any training courses, either online or in person, in either case related to the Software; or (3) access any of Hyland’s secure websites (including, but not limited to, users.onbase.com, teamonbase.com, training.onbase.com, demo.onbase.com, and Hyland.com/Community), either through Contractor’s use of User’s own log-in credentials or through credentials received directly or indirectly by Contractor, in any case unless and until such Contractor and Hyland have executed an agreement in a form available for download at Hyland’s Community website (“Contractor Use Agreement”). In the case of any Contractor which has not signed a Contractor Use Agreement (including in the case of any breach by User of the preceding sentence (“Unauthorized Contractor”)), User agrees to indemnify Hyland from and against all claims, liabilities, losses, damages and costs, including, but not limited to, reasonable attorneys’ fees and court costs, suffered or incurred by Hyland to the extent arising from breach by such Contractor of any provision of the Agreement, and in the case of an Unauthorized Contractor, any obligation to which such Unauthorized Contractor would have been subject had it signed the Contractor Use Agreement.
- (m) The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury to any person, or to severe physical or environmental damage (“High Risk Use”). User is not licensed to use the Software in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non- controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. User agrees not to use, distribute or sublicense the use of the Software in, or in connection with, any High Risk Use." User agrees to indemnify and hold harmless Hyland from any third-party claim arising out of User’s use of the Software in connection with any High Risk Use.
- (n) Upon reasonable notice to User Hyland shall be permitted access to User’s Software system solely to audit User’s use of the Software in order to determine User’s compliance with the licensing and pricing terms of this EULA. User shall reasonably cooperate with Hyland with respect to its performance of such audit. User acknowledges and agrees that User is prohibited from publishing the results of any benchmark test using the Software to any third party without Hyland’s prior written approval, and that User has not relied on the future availability of any programs or services in entering into this EULA.
- (o) The Medical Imaging Viewer Powered by Agfa Software module can provide an optional lossy compression algorithm for the permanent long-term archive. Responsibility for any decision by User to implement lossy compression (as opposed to lossless compression, which is the default) and or the deletion of the original data file will lie solely with the User. User acknowledges that lossy compression is irreversible and will result in the permanent destruction of image data and a loss of image quality. User also acknowledges that any decision as to the suitability of lossy compression for a particular image type or class of images lies solely with the User.

2. **OWNERSHIP:** Hyland’s direct and indirect suppliers, including Hyland Software, Inc. and its suppliers, own the Software, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software are transferred to User. User agrees that nothing in this EULA or associated documents gives it any right, title or interest in the Software, except for the limited express rights granted in this EULA.

3. **INSTALLATION; DELIVERY OF HASPS AND CDS:** User may retain Hyland or the Hyland authorized solution provider through which User orders the Software to provide installation services pursuant to the terms of a separate work agreement governing the procurement and performance of such services. User is responsible for hardware and non-licensed software for the installation, operation and support of the Software. Delivery of HASPs and CDs, if any, shall be F.O.B. Hyland’s offices in Westlake, Ohio, USA.

4. LIMITED WARRANTY; DISCLAIMER OF OTHER WARRANTIES:

- (a) For a period of sixty (60) days from the date of delivery of Software delivered to User on tangible media at User's site, Hyland warrants to User that the media on which the Software is delivered are free from defects in materials and in workmanship.
- (b) For a period of sixty (60) days from the earlier of: (1) the date that license codes, files, or certificate necessary for User to activate the Software for use have been shipped or made available for download to the destination applicable under the purchase order for the Software received by Hyland; or (2) the sixtieth (60th) day after the date that the Software has been shipped or made available for download to the destination applicable under the purchase order for the Software received by Hyland, Hyland warrants to User that the Software, when properly installed and properly used, will operate substantially in accordance with the "Help Files" included in the Software that is included in the Software that relate to the functional, operational or performance characteristics of the Software ("Documentation"). The terms of this warranty shall not apply to, and Hyland shall have no liability for any non-conformity related to, any Software that has been (1) modified by User or a third party, (2) used in combination with equipment or software other than that which is consistent with the Documentation, or (3) misused or abused.
- (c) Hyland's sole obligation, and User's sole and exclusive remedy, for any non-conformities to the express limited warranties under paragraph (a) or (b) shall be as follows: provided that, within the applicable 60-day period, User notifies Hyland in writing of the non-conformity, Hyland will either (1) repair or replace the non-conforming media or Software, which in the case of the Software may include the delivery of a commercially reasonable workaround for the non-conformity; or (2) if Hyland determines that repair or replacement of the non-conforming media or Software is not commercially practicable, then terminate this EULA with respect to the Software associated with the non-conforming media or with respect to the non-conforming Software, in which event, upon compliance by User with its obligations under Section 7, Hyland will refund any portion of the Software license fees paid prior to the time of such termination with respect to such Software.
- (d) HYLAND AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES OR REPRESENTATIONS REGARDING THE SOFTWARE OR ANY MEDIA. HYLAND AND SUCH SUPPLIERS DISCLAIM AND EXCLUDE ANY AND ALL OTHER WARRANTIES, EXPRESSED IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES THAT ARISE OR MAY BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. HYLAND AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL SATISFY USER'S REQUIREMENTS OR IS WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. USER SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE ITS BUSINESS OBJECTIVES. HYLAND AND ITS SUPPLIER DO NOT PROVIDE ANY WARRANTY OR ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.
- (e) No oral or written information given by Hyland, its agents, or employees shall create any additional warranty. No modification or addition to this warranty is authorized unless it is set forth in writing, references this EULA, and is signed on behalf of Hyland by a corporate officer.

5. **LIMITATIONS OF LIABILITY:** IN NO EVENT SHALL HYLAND'S (INCLUDING ITS SUPPLIERS') LIABILITY EXCEED THE AMOUNT OF THE SOFTWARE LICENSE FEES ACTUALLY PAID BY USER. IN NO EVENT WILL HYLAND OR ITS DIRECT OR INDIRECT SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR CLAIMS BY THIRD PARTIES, EVEN IF HYLAND SOFTWARE, INC. OR SUCH SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL MICROSOFT CORPORATION, AS A SUPPLIER TO HYLAND OF THIRD PARTY SOFTWARE BUNDLED WITH THE SOFTWARE LICENSED UNDER THIS AGREEMENT, BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF FIVE DOLLARS (\$5.00).

FOR USERS THAT PROVIDE HEALTHCARE SERVICES: IF USER USES THE SOFTWARE IN A CLINICAL SETTING, USER ACKNOWLEDGES THAT THE SOFTWARE IS AN ADVISORY DEVICE AND IS NOT INTENDED TO SUBSTITUTE FOR THE PRIMARY DEFENSES AGAINST DEATH OR INJURY DURING MEDICAL DIAGNOSIS, TREATMENT OR SIMILAR APPLICATIONS, WHICH DEFENSES SHALL CONTINUE TO BE THE SKILL, JUDGMENT AND KNOWLEDGE OF THE USER'S USERS OF THE SOFTWARE.

6. **MAINTENANCE:** Maintenance and technical support of the Software may be available for purchase by User from Hyland or the Hyland authorized solution provider through which User has ordered the Software pursuant to the terms of a separate Software Maintenance Agreement.

7. **TERMINATION:** Except in the case of a breach or failure to comply by User with any of the provisions of Section 1(d) of the EULA (with respect to which User shall have no right to cure a breach or non-compliance and Hyland may terminate this EULA immediately upon written notice to such effect to User), Hyland may terminate this EULA if User breaches or fails to comply with any provision of this EULA and Hyland first gives written notice to User of the breach or non-compliance with this EULA, which notice shall specify in reasonable detail such breach or non-compliance, and User fails to cure such breach or non-compliance within thirty (30) calendar days after receipt of such notice. Upon termination of this EULA for any reason, including, but not limited to, as specified in this Section 7 or in Section 4, User shall immediately (a) discontinue any and all use of the Software and Documentation; and (b) either (1) return the Software and Documentation and any HASP's to Hyland, or (2) with the permission of Hyland, destroy the Software, Documentation and any HASP's and certify in writing to Hyland that User has completed such destruction. The obligations of User under the preceding sentence and all disclaimers of warranties, confidentiality obligations, and limitations of liability set forth in this EULA shall survive any termination.

8. **SEVERABILITY:** In the event that a court of competent jurisdiction determines that any portion of this EULA is unenforceable, it shall not affect any other provisions of this EULA.

9. **NOTICE:** All notices, requests or other communications required to be given pursuant to this EULA shall be in writing, shall be addressed to the recipient party at its principal place of business or to such other address as the recipient party may direct in writing, and shall be personally delivered or sent by certified or registered U.S. mail, return receipt requested, Hyland or by prepaid commercial overnight courier. All notices, requests or other communications delivered as specified herein shall be deemed to have been given and received on the date personally delivered or on the date deposited in the U.S. mail or with the commercial overnight courier.

10. **GOVERNING LAW AND JURISDICTION:** The laws of the State of Ohio, shall govern this EULA, without regard to the conflict of laws principles thereof. The parties mutually agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, each as amended shall not be applicable with respect to this EULA. Any legal action brought concerning this EULA or any dispute hereunder shall be brought only in the courts of the State of Ohio, in the County of Cuyahoga, or in the federal courts located in such state and county. Both parties submit to venue and jurisdiction in these courts. In the event that an action or claim arises outside of the exclusive jurisdiction specified herein which names Hyland as a party, User agrees to initiate, consent to and/or cooperate with any and all efforts to remove the matter to the exclusive jurisdiction named herein, or otherwise to take any and all reasonable actions to achieve Hyland's objectives of this provision.

11. **U.S. GOVERNMENT END USERS:** The terms and conditions of this EULA shall pertain to the Government's use and/or disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this EULA and/or the delivery of the Software, the Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of ALL federal acquisition regulation(s) applicable to this procurement and that the Software is developed exclusively at private expense. If this license fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return this Software to Hyland. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or documentation by the Government is subject solely to the terms of this EULA, as stated in DFARS 227.7202, and the terms of this EULA shall supersede any conflicting contractual term or conditions.

12. **EXPORT:** The Software and Documentation are subject to United States export control laws and regulations. User agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including, but not limited to, the U.S. Department of Commerce Export Administration Regulations (EAR), to assure that the Software or Documentation is not exported in violation of United States of America law. User agrees that it will not export or re-export the Software or Documentation to any organizations or nationals in the territories of Cuba, Iran, Iraq, North Korea, Burma (Myanmar), Sudan, Syria or any other territory or nation with respect to which the U.S. Department of Commerce, the U.S. Department of State or the U.S. Department of Treasury maintains any commercial activities sanctions program. User shall not use the Software or Documentation for any prohibited end uses under applicable United States laws and regulations, including but not limited to, any application related to, or purposes associated with, nuclear, chemical or biological warfare, missile technology (including unmanned air vehicles), military application or any other use prohibited or restricted under the U.S. Export Administration Regulations (EAR) or any other relevant laws, rules or regulations of the United States of America.

13. **THIRD PARTIES.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this EULA; provided, however, that third party suppliers of software products bundled with the Software are third party beneficiaries to this EULA as it applies to their respective software products.

14. **ENTIRE AGREEMENT:** This EULA (including the exhibits and schedules attached hereto) constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. All purchase orders submitted shall be subject solely to the terms of this EULA and the additional terms contained in any invoice delivered by Hyland or the Hyland authorized solution provider, and any preprinted terms on any purchase order form used for the convenience of User are objected to and shall not alter or amend the terms of this EULA or any such invoice. This EULA may be amended or modified only by an agreement in writing signed by each of the parties and may not be modified by course of conduct.

15. CONFIDENTIAL INFORMATION.

- (a) "Confidential Information" shall be such information that is marked "Proprietary" or "Confidential," that is known by User to be confidential or that is of such a nature as customarily would be confidential between business parties, except as provided in the next sentence. Confidential Information shall not include information that: (a) is or becomes generally known to the public without breach of this Agreement by User, or (b) is demonstrated by User to have been in User's possession prior to its disclosure by Hyland, or (c) is received by User from a third party that is not bound by restrictions, obligations or duties of non-disclosure to Hyland, or (d) is demonstrated by User to have been independently developed by User without breach of its obligations.
- (b) User shall at all times maintain the confidentiality of Hyland's Confidential Information, using the same degree of care that User uses to protect its own confidential information, but in any event not less than reasonable care; and shall not use (except in performance of this EULA) or disclose to any third party any such Confidential Information, except as may be required by law or court order. User shall be liable and responsible for any breach of this Section 16 committed by any of User's employees, agents, consultants, contractors or representatives.

IN WITNESS WHEREOF, the parties have duly executed this EULA.

USER

By:

Print Name: Darryl Croft

Title: Mayor

Date: October 9, 2018

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

HYLAND SOFTWARE, INC.

By:

Print Name:

Title:

Date:

Hyland Legal

Approved By:

Date:

EXHIBIT A
TO
EULA

Software licensed for use pursuant to the EULA:

1. Software modules or products with respect to which User properly submits a written purchase order to, and pays Software license fees to, Hyland or its authorized solution provider. All such modules accurately listed on User's properly submitted written purchase order(s) shall, upon payment in full of the Software license fees, automatically be deemed to be added to the Software listed on this Exhibit A, whether or not the parties actually amend the form of this Exhibit A.

2. All "Upgrades or Enhancements" to the Software described in paragraph (1) above that User properly obtains pursuant to the terms of a Software Maintenance Agreement between User and Hyland or Hyland's authorized solution provider.

Payment of Software license fees:

Unless and until Hyland notifies User in writing to the contrary, the Software license fees due and payable by User shall be mutually agreed upon by User and Hyland's authorized solution provider from which User ordered the Software; User is authorized to make any and all payments of such Software license fees to such authorized solution provider pursuant to such payment terms as User shall have mutually agreed to with such authorized solution provider; and User agrees to pay such Software license fees and to make all such payments in accordance with such mutually agreed upon terms.

**ADDENDUM TO
SOFTWARE END USER LICENSE AGREEMENT
BETWEEN
HYLAND SOFTWARE, INC.
AND
THE TOWN OF CHINO VALLEY**

This ADDENDUM (“Addendum”) dated October 9, 2018, modifies the Software End User License Agreement dated September 25, 2018 (the “Original Agreement”), entered into between Hyland Software, Inc., an Ohio corporation (“Hyland”), and the Town of Chino Valley, an Arizona municipal corporation (“User”). All of the capitalized terms not otherwise defined in this Addendum have the same meanings as contained in the Original Agreement. The following provisions modify, replace or delete sections of the Original Agreement and add additional sections to the Original Agreement. The sections of the Original Agreement that are not expressly modified, replaced or deleted by this Addendum shall remain in effect pursuant to their terms. The Original Agreement and this Addendum are collectively referred to herein as the “Agreement.”

AGREEMENT

1. Section 14, Entire Agreement, is hereby amended as follows:

14. **ENTIRE AGREEMENT:** This EULA (including the exhibits and schedules attached hereto), together with the Addendum, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. All purchase orders submitted shall be subject solely to the terms of this EULA and the additional terms contained in any invoice delivered by Hyland or the Hyland authorized solution provider, and any preprinted terms on any purchase order form used for the convenience of User are objected to and shall not alter or amend the terms of this EULA or any such invoice. This EULA may be amended or modified only by an agreement in writing signed by each of the parties and may not be modified by course of conduct.

2. A new Section 16, Conflict of Interest, is hereby added to the Original Agreement to read as follows:

16. **CONFLICT OF INTEREST.** This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. User may cancel this Agreement without penalty or further obligations by the User or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the User or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

3. **A new Section 17, E-Verify Requirements, is hereby added to the Original Agreement to read as follows:**

17. **E-VERIFY REQUIREMENTS.** To the extent applicable under ARIZ. REV. STAT. § 41-4401, Hyland and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Hyland's or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the User. The User retains the legal right to randomly inspect the papers and records of Hyland and its subcontractors who work on this Agreement to ensure that Hyland and its subcontractors are complying with the above-mentioned warranty.

4. **A new Section 18, Israel, is hereby added to the Original Agreement to read as follows:**

18. **ISRAEL.** Hyland certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

5. **A new Section 19, Conflicting Terms, is hereby added to the Original Agreement to read as follows:**

19. **CONFLICTING TERMS.** In the event of any inconsistency, conflict or ambiguity between this Addendum and the Original Agreement, this Addendum shall govern.

6. **A new Section 20, Counterparts, is hereby added to the Original Agreement to read as follows:**

20. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

[SIGNATURES ON FOLLOWING PAGES]

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

“Hyland”

HYLAND SOFTWARE, INC.
an Ohio corporation

By: _____

Name: _____

Title: _____

HYLAND LEGAL:

By: _____

Date: _____

“User”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

7.c.

Meeting Date: 10/09/2018
Contact Person: Frank Marbury, Public Works Director/Town Engineer
 Phone: 928-636-7140 x-1226
Department: Public Works
Item Type: Action-Presentation
Estimated length of staff presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to direct staff and Council to dialogue with the community regarding a 20-year Roads Maintenance Plan and its funding per recommendation of the Roads and Streets Committee.

RECOMMENDED ACTION:

Direct staff and Council to dialogue with the community regarding a 20-year Roads Maintenance Plan and its funding per recommendation of the Roads and Streets Committee.

SITUATION AND ANALYSIS:

On September 10, 2018, the Roads and Streets Committee discussed development of a Roads Maintenance Plan and funding options. A Roads Maintenance Plan with appropriate funding would allow the Town to schedule regular maintenance and preservation of all the Town's roads and prevent the current state of deterioration of many of the Town's roads.

On September 24, 2018, staff presented to the Council the Roads Maintenance Plan reviewed by the Roads and Streets Committee, along with a comprehensive review of:

- Pavement preservation and rehabilitation strategies;
- Maintenance and preservation costs and current financial resources;
- Property tax options; and
- Comparisons with neighboring entities.

Council directed staff to place this proposal on the October 9 agenda for direction to staff.

Fiscal Impact

Fiscal Impact?: Yes

If Yes, Budget Code:

Available:

Funding Source:

Attachments
<i>No file(s) attached.</i>



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

7.d.

Meeting Date: 10/09/2018
Contact Person: Frank Marbury, Public Works Director/Town Engineer
 Phone: 928-636-7140 x-1226
Department: Public Works
Item Type: Action
Estimated length of staff presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to waive the bidding requirements and purchase a new 2018 John Deere 410L Backhoe Loader utilizing cooperative purchasing contract #032515-JDC through Sourcewell (formerly National Joint Powers Alliance).

RECOMMENDED ACTION:

Waive the bidding requirements and approve a Purchase Order Contract with RDO Equipment Co. to purchase a new 2018 John Deere 410L Backhoe Loader for a total amount not to exceed \$123,917.60 utilizing cooperative purchasing contract #032515-JDC through Sourcewell.

SITUATION AND ANALYSIS:

The Roads Division is in need of a backhoe for general maintenance and repair of Town roads including moving materials such as aggregate base, rip rap and sand. It will be used to repair failed sections of roads, to clean roadside ditches, and replace culverts. The backhoe is included in the Town's adopted FY 2018-19 Budget in the amount of \$155,000.

Purchasing this equipment using Sourcewell cooperative purchasing contract #032515-JDC meets the section 32.08 (C) "Cooperative Purchasing" of Town Code. Additionally, utilizing this cooperative purchasing contract with RDO Equipment Co. (John Deere's local dealer), the Town received a discount of 44% off the manufacturers suggested price.

Fiscal Impact

Fiscal Impact?: 123,917.60
If Yes, Budget Code: 02-78-5411
Available: 155,000.00
Funding Source:

Attachments

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
RDO CONSTRUCTION EQUIPMENT CO.
D/B/A RDO EQUIPMENT CO.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of October 9, 2018, between the Town of Chino Valley, an Arizona municipal corporation (the "Town"), and RDO Construction Equipment Co., a North Dakota corporation, d/b/a RDO Equipment Co. (the "Contractor").

RECITALS

A. After a competitive procurement process, National Joint Powers Alliance ("NJPA") entered into Contract No. 032515-JDC, dated May 19, 2015 (the "NJPA Contract"), with John Deere Construction Retail Sales, a division of John Deere Shared Services, Inc. ("John Deere"), for the purchase of heavy construction equipment with related accessories, attachments and supplies. A copy of the NJPA Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement. Contractor is an authorized dealer for John Deere.

B. The Town is permitted to purchase such equipment under the NJPA Contract, at its discretion and with the agreement of the awarded Contractor.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the NJPA Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with one new 2018 John Deere 410L backhoe loader, as more particularly set forth in Section 2 below (the "Equipment") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Equipment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until April 30, 2019, unless terminated as otherwise provided in this Agreement or the NJPA Contract.

2. Scope of Work. Contractor shall provide to the Town the Equipment under the terms and conditions of the NJPA Contract and in the configurations set forth in the Quote attached hereto as Exhibit B and incorporated herein by reference. The Equipment shall be delivered to: 1910 Voss Drive, Chino Valley, Arizona 86323

3. Inspection; Acceptance. The Equipment is subject to final inspection and acceptance by the Town. Equipment failing to conform to the requirements of this Agreement and/or the NJPA Contract will be held at the Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Equipment, the Town may elect to do either of the following by written notice to the Contractor: (i) waive the non-conformance or (ii) bring the Equipment into compliance and withhold the cost of same from any payments due to the Contractor.

4. Compensation. The Town shall pay Contractor an amount not to exceed \$123,917.60 for the Equipment at the unit rate set forth in the NJPA Contract and as more particularly set forth in the Quote.

5. Payments. The Town shall pay the Contractor upon delivery and acceptance of the Equipment and upon submission and approval of the invoice. The invoice shall (i) contain a reference to this Agreement and the NJPA Contract and (ii) document the Equipment delivered and accepted to date. Additionally, an invoice submitted without referencing this Agreement and the NJPA Contract will be subject to rejection and may be returned.

6. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 7 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 7 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

7. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

8. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

9. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

10. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

11. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town’s then current fiscal year. The Town’s obligations under this Agreement are current expenses subject to the “budget law” and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town’s obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town’s termination of this Agreement pursuant to this section.

12. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the NJPA Contract and the invoice, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the NJPA Contract (collectively, the “Unauthorized Conditions”), other than the Town’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the NJPA Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

13. Rights and Privileges. To the extent provided under the NJPA Contract, the Town shall be afforded all of the rights and privileges afforded to NJPA and shall be “NJPA” (as defined in the NJPA Contract) for the purposes of the portions of the NJPA Contract that are incorporated herein by reference.

14. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 13 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to NJPA to the extent provided under the NJPA Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance.

15. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Chino Valley
202 North State Route 89
Chino Valley, Arizona 86323
Attn: Town Manager

With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Contractor: RDO Construction Equipment Co.
d/b/a RDO Equipment Co.
5500 East Penstock Avenue
Flagstaff, Arizona 86004
Attn: Zachariah Pierson

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

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

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Contractor”

RDO CONSTRUCTION EQUIPMENT CO.,
a North Dakota corporation
D/B/A RDO EQUIPMENT CO.

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
RDO CONSTRUCTION EQUIPMENT CO.
D/B/A RDO EQUIPMENT CO.

[NJPA Contract]

See following pages.

Contract Award
RFP 032515 #

FORM D



Formal Offering of Proposal
(To be completed Only by Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES
In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: John Deere Construction Retail Sales Date: March 18, 2015

Company Address: 1515 Fifth Avenue

City: Moline State: IL Zip: 61265

Contact Person: Mark R. Deakyne Title: Contract Manager

Authorized Signature (ink only):

A handwritten signature in blue ink, reading "Mark R. Deakyne", is written over a horizontal line.

Mark R. Deakyne
(Name printed or typed)

Form E**Contract Acceptance and Award**

(To be completed only by NJPA)

**NJPA 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES,
ATTACHMENTS, AND SUPPLIES**

Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 19th, 20 15 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: _____

NJPA Executive DirectorDr. Chad Coquette

(Name printed or typed)

Awarded this 19th day of May, 20 15 NJPA Contract Number 032515-JDC

NJPA Authorized signature: _____

NJPA Board MemberScott Veronen

(Name printed or typed)

Executed this 19th day of May, 20 15 NJPA Contract Number 032515-JDC

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name John Deere Construction Retail Sales a division of John Deere Shared Services, Inc.

Vendor Authorized signature: _____

Mark R. Deakyne

(Name printed or typed)

Title: Contract Manager

Executed this Twenty-First day of May, 20 15 NJPA Contract Number 032515-JDC



National Joint Powers Alliance® (herein NJPA)

REQUEST FOR PROPOSAL (herein RFP)

for the procurement of

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

RFP Opening

MARCH 26, 2015

8:00 a.m. Central Time

At the offices of the

National Joint Powers Alliance®

202 12th Street Northeast, Staples, MN 56479

RFP #032515

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of # 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES. Details of this RFP are available beginning JANUARY 23, 2015. Details may be obtained by letter of request to Jonathan Yahn, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until MARCH 25, 2015 at 4:30 p.m. Central Time at the above address and opened MARCH 26, 2015 at 8:00 a.m. Central Time.

RFP Timeline

JANUARY 23, 2015

Publication of RFP in the print and online version of the Minneapolis Star Tribune, in the print and online version of the USA Today, in the print and online version of the Salt Lake News within the State of Utah, in the print and online version of the Daily Journal of Commerce within the State of Oregon (note: OR entities this pertains to: <http://www.njpacoop.org/oregon-advertising>), in the print and online version of The State within the State of South Carolina, the NJPA website, MERX, Noticetobidders.com, PublicPurchase.com, Biddingo, and Onvia.

**MARCH 4, 2015
10:00 a.m. Central Time**

Pre-Proposal Conference (the webcast/conference call. The connection information will be sent to all inquirers two business days before the conference).

MARCH 18, 2015

Deadline for RFP questions.

**MARCH 25, 2015
4:30 p.m. Central Time**

Deadline for Submission of Proposals. Late responses will be returned unopened.

**MARCH 26, 2015
8:00 a.m. Central Time**

Public Opening of Proposals.

Direct questions regarding this RFP to: Jonathan Yahn at jonathan.yahn@njpacoop.org or (218)895-4144.

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1 DEFINITIONS

A. CONTRACT

“Contract” as used herein shall consist of: this RFP, pricing, fully executed forms C, D, F & P from the Proposer’s response pursuant to this RFP, and a fully executed form E (“Acceptance and Award”) with final terms and conditions. Form E will be executed on or after award and will provide final clarification of terms and conditions of the award.

B. CURRENCY

All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

C. EXCLUSIVE VENDOR

A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members nationally. A Proposer that exhibits and demonstrates the ability to offer and execute an outstanding overall program, demonstrates the ability and willingness to serve NJPA current and qualifying Members in all 50 states and comply with all other requirements of this RFP, is preferred.

D. FOB

FOB stands for “Freight On Board” and defines the point at which responsibility for loss and damage of product/equipment purchased is transferred from Seller to Buyer. “FOB Destination” defines that transfer of responsibility for loss is transferred from Seller to Buyer at the Buyer’s designated delivery point. FOB does not identify who is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

E. HUB PARTNER

An organization that a member requests to be served through with an Awarded Vendor for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction.

F. PROPOSER

A company, person, or entity delivering a timely response to this RFP.

G. REQUEST FOR PROPOSAL

Herein referred to as RFP.

H. SOURCED GOODS

A Sourced Good or Open Market Item is a product within the RFP’s scope - generally deemed incidental to the total transaction or purchase of contract items - which a member wants to buy under contract from an Awarded Vendor that is not currently available under the Vendor’s NJPA contract.

I. TIME

Periods of time, stated as number of days, shall be in calendar days.

J. TOTAL COST OF ACQUISITION

The Total Cost of Acquisition for the equipment/products and related services being proposed is the cost of the proposed equipment/products and related services delivered and operational for its intended purpose in the end-user’s location.

K. VENDOR

A Proposer whose response has been awarded a contract pursuant to this RFP.

2 ADVERTISEMENT OF RFP

2.1 NJPA shall advertise this solicitation: 1) for two consecutive weeks in both the hard copy print and on-line editions of the MINNEAPOLIS STAR TRIBUNE; 2) once each in Oregon's Daily Journal of Commerce, South Carolina's The State and Utah's Salt Lake Tribune; 3) on NJPA's website; 4) in the hard copy print and online editions of the USA Today; and 5) on other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia, PublicPurchase.com, MERX and Biddingo.

2.2 NJPA also notifies and provides solicitation documentation to each State level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

3 INTRODUCTION

A. ABOUT NJPA

3.1 The National Joint Powers Alliance® (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.

3.2 Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at www.njpacoop.org.

3.3 NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors calls for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.

3.3.1 Subject to Approval of the NJPA Board: NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.

3.4 NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

B. JOINT EXERCISE OF POWERS LAWS

3.5 NJPA cooperatively shares those contracts with its Members nationwide through various Joint Exercise of Powers Laws or Cooperative Purchasing Statutes established in Minnesota, other States and Canadian Provinces. The Minnesota Joint Exercise of Powers Law is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/national-cooperative-contract-solutions/legal-authority/>.

C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

3.6 National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:

3.6.1 National cooperative contracts potentially save the time and effort of Municipal and Public Agencies who would have been otherwise charged with soliciting vendor responses to individual RFP's, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond to each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same equipment/products/services that might have been otherwise advertised by individual NJPA member agencies.

3.6.2 NJPA contracts offer our Members nationally leveraged volume purchasing discounts. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

3.7 State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

3.8 The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

3.9 NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

D. THE INTENT OF THIS RFP

3.10. National contract awarded by the NJPA Board of Directors: NJPA seeks the most responsive and responsible Vendor relationship(s) to reflect the best interests of NJPA and its Member agencies. Through a competitive proposal and evaluation process, the NJPA Proposal Evaluation Committee reviews and recommends vendors for to award a national contract by the action of the NJPA Board of Directors. NJPA's primary intent is to establish and provide a national cooperative procurement contract which offer opportunities for NJPA and our Member agencies to procure quality product/equipment and services as desired and needed. The contracts will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

3.11 Beyond our primary intent, NJPA further desires to:

3.11.1 Award a four year term contract with a fifth year contract option resulting from this RFP;

3.11.2 Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP

3.11.3 Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";

3.11.4 Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.

3.11.5 Award an exclusive contract to the most responsive and responsible vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies

3.12 Exclusive or Multiple Awards: Based on the goals and scope of this RFP, NJPA is requesting responders to demonstrate their ability to serve the needs of NJPA's national membership. It is NJPA's intent and desire to award a contract to a single exclusive Vendor to serve our membership's needs. To meet the goals of this RFP, NJPA reserves the right to award a Contract to multiple Proposers where the result justifies a multiple award and multiple contracts are deemed to be in the best interests of NJPA Member agencies.

3.13 Non-Manufacturer Awards: NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

3.14 Manufacturer as a Proposer: If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer's authorized Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

3.15 Dealer/Re-seller as a Proposer: If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer's authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

E. SCOPE OF THIS RFP

3.16 Scope: The scope of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive and responsible through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES .

3.17 Additional Scope Definitions: For purposes of the scope of this solicitation:

3.17.1 In addition to HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES, **this solicitation should be read to include, but not to be limited to:**

3.17.1.1 Wheel or track loaders, motor graders, excavators, bull dozers, compactors, scrapers, vocational trucks, articulated trucks, cranes, paving machines, screeds, pavement milling machines, and rollers.

3.17.2 NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

3.17.2.1 Respondents must meet at least ONE of the following three requirements (A through C) to be considered within the scope of this solicitation.

A) The response must include at least one of EACH of the following: a wheeled or track loader with published net horsepower in excess of 300 H.P., an excavator with published operating weight in excess of 60,000 lbs., or a motor grader with published operating weight in excess of 35,000 lbs.

B) The response must include at least one crane with a published maximum lifting capacity exceeding 300 tons and a published maximum boom length exceeding 150 feet.

C) The response must include at least one of EACH of the following: a paver, a pavement milling machine, or a screed.

For purposes of this Section 3.17.2.1, the term “published” means that the information is readily available through the respondent’s printed literature or website and that the respondent has verified the accuracy the information.

3.18 Overlap of Scope: When considering equipment/products/services, or groups of equipment/products/services submitted as a part of your response, and whether inclusion of such will fall within a “Scope of Proposal,” please consider the validity of an inverse statement.

3.18.1 For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.

3.18.2 In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.

3.18.3 In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original “Scope” as intended by NJPA.

3.19 Best and Most Responsive – Responsible Proposer: It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer’s Response has been submitted in accordance with the requirements of this RFP. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP.

3.20 Sealed Proposals: NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

3.21 Use of Contract: Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to

obtain like equipment/products and services solely from this contract or from another contract source of their choice or from a contract resulting from their own procurement process.

3.22 Awarded Vendor's interest in a contract resulting from this RFP: Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as "contract compliant," products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

3.23 Sole Source of Responsibility- NJPA desires a "Sole Source of Responsibility" Vendor. This means the Vendor will take sole responsibility for the performance of delivered equipment/products/ services. NJPA also desires sole responsibility with regard to:

3.23.1 Scope of Equipment/Products/Services: NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

3.23.2 Vendor use of sub-contractors in sourcing or delivering equipment/product/services: NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the equipment/products/services being proposed. Vendor assumes all responsibility for the equipment/products/services and actions of any such Sub-Contractor. Suggested Solutions Options include:

3.24.1 Multiple solutions to the needs of NJPA and NJPA Members are possible. Examples could include:

3.24.1.1 Equipment/Products Only Solution: Equipment/Products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

3.24.1.2 Turn-Key Solutions: A Turn-Key Solution is a combination of equipment/products and services which provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

3.24.1.3 Good, Better, Best: Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Members' needs.

3.24.1.4 Proven – Accepted – Leading Edge Technology: Where appropriate and properly identified, Proposers are invited to provide an appropriate identified spectrum of technology solutions to compliment or enhance the functionality of the proposed solutions to NJPA and NJPA Members' needs both now and into the future.

3.24.2 If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

3.25 Geographic Area to be Proposed: This RFP invites proposals to provide HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.

3.26 Contract Term: At NJPA's option a contract resulting from this RFP will become effective either the date awarded by the NJPA Board of Directors or the day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

3.26.1 NJPA is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. However, one additional one-year renewal/extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members. NJPA reserves the right to conduct periodic business reviews throughout the term of the contract.

3.27 Minimum Contract Value: NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract.

3.28 Estimated Contract Volume: Estimated quantities and sales volume are based on potential usage by NJPA and NJPA Member agencies nationally.

3.29 Contract Availability: This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

3.30 Proposer's Commitment Period: In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

3.31 Industry Standards: Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

3.31.1 Deviations from industry standards must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

3.31.2 Technical Descriptions/Specifications. Excessive technical descriptions and specifications which, in the opinion of NJPA unduly enlarge the proposal response may reduce evaluation points awarded on Form G. Proposers must supply sufficient information to:

3.31.2.1 demonstrate the Proposer's knowledge of industry standards;

3.31.2.2 identify the equipment/products and services being proposed; and

3.31.2.3 differentiate equipment/products and services from others.

3.32 New Current Model Equipment/Products: Proposals submitted shall be for new, current model equipment/products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

3.33 Compliance with laws and standards: All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

3.34 Delivered and operational: Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

3.35 Warranty: The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

3.36 Additional Warrants: The Proposer warrants all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the ordinary use for which they are intended.

G. SOLUTIONS BASED SOLICITATION

3.37 NJPA solicitations and contract process will not offer specific specifications for proposers to meet or base your response on. This RFP is a "Solutions Based Solicitation." This means the proposers are asked to understand and anticipate the current and future needs of NJPA and the nationally located NJPA membership base, within the scope of this RFP, and including specifications commonly desired or required by law or industry standards. Your proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

3.38 NJPA does not typically provide product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested product/equipment and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer's "Solution" to NJPA and NJPA Members' needs.

4 INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

A. INQUIRY PERIOD

4.1 The inquiry period shall begin at the date of first advertisement and continue to the "Deadline for Requests." RFP packages shall be distributed to Potential Bidders during the inquiry period. The purpose for the defined "Inquiry Period" is to ensure proposers have enough time to complete and deliver the proposal to our office.

B. PRE-PROPOSAL CONFERENCE

4.2 A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP and hear answers to their own questions and the questions of other Potential Proposers. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.

C. IDENTIFICATION OF KEY PERSONNEL

4.3 Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

4.4 Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

D. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

4.5 Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

4.6 Exceptions, deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

E. PROPOSAL FORMAT

4.7 It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

4.8 All proposals must be properly labeled and sent to "The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479."

4.9 Format for proposal response: All proposals must be physically delivered to NJPA at the above address in the following form and with all required hard copy documents and signature forms/pages inserted as loose pages at the front of the Vendor's response:

4.9.1 Hard copy original signed, completed, and dated forms C, D, F and hard copy signed signature page only from forms A and P from this RFP;

4.9.2 Hard copies of all addenda issued for the RFP with original counter signed by the Proposer;

4.9.3 Hard copy of Certificate of Insurance verifying the coverage identified in this RFP; and

4.9.4 A complete copy of your response on a CD (Compact Disc) or flash drive. The copy shall contain completed Forms A, B, C, D, F & P, your statement of products and pricing (including apparent discount) together with all appropriate attachments. Everything you send with your hard copy should also be included in the electronic copy. As a public agency, NJPA proposals, responses and awarded contracts are a matter of public record, except for that data included in the proposals, responses and awarded contracts that is classified as nonpublic; thus, pursuant to statute, NJPA policies and RFP terms and conditions, all documentation, except for that data which is nonpublic is available for review by the public through a public records request. If you wish to request that

certain information that falls within Minnesota Statute §13.37 be redacted, such request must be made within thirty-days of award/non-award.

4.10 All Proposal forms must be submitted in English and be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

4.11 Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the Proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.

4.12 It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

4.12.1 Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message **“Hold for Proposal Opening”**, and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

4.13 Corrections, erasures, and interlineations on a Proposer’s Response must be initialed by the authorized signer in original ink on all copies to be considered.

4.14 Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums to this RFP.

4.14.1 Proposer’s are responsible for checking directly with the NJPA website for addendums to this RFP.

4.14.2 Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

F. QUESTIONS AND ANSWERS ABOUT THIS RFP

4.15 Upon examination of this RFP document, Proposer shall promptly notify NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

4.16 Submit all questions about this RFP, in writing, referencing HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to Jonathan Yahn, NJPA 202 12th Street NE, Staples, MN 56479 or RFP@njpacoop.org. Those not having access to the Internet may call Jonathan Yahn at (218) 895-4144. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Jonathan Yahn. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7th) calendar day prior to proposal due-date cannot be answered; however, communications permitted include: NJPA issued addenda or potential Vendor withdrawal of their response prior to RFP submission deadline.

4.17 If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

4.18 If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

4.19 As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

4.20 Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at www.njpacoop.org by clicking on “Current and Pending Solicitations” and from the NJPA offices. No questions will be accepted by NJPA later than seven (7) days prior to the deadline for receipt of proposals, except Each Potential Proposer shall ascertain prior to submitting a Proposal that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

4.21 An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the time specified for opening of all proposals.

G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

4.22 A submitted proposal may not be modified, withdrawn or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened. Prior to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Contracts and Compliance Manager. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

4.23 Examples of Value Added Attributes: Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be “Value Added Services” for products where a typical buyer may not have the ability to perform these functions. The opportunity to indicate value added dimensions and such advancements will be available in the Proposer’s Questionnaire and Proposer’s product and service submittal.

4.24 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES and advances to provide equipment/products/services or supplies meeting and/or exceeding today’s industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products/services and training. Value added could include areas of equipment, product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

4.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation: It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase equipment/products and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide “Credits” to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. NJPA is committed to facilitating the realization of such “Credits” through certain structuring techniques for transactions resulting from this RFP.

4.26 Environmentally Preferred Purchasing Opportunities: There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. “Green” characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any Green characteristics of the equipment/products and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as “green” and by which certifying agency.

4.27 On-Line Requisitioning systems: When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

4.28 Financing: The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

H. PROPOSAL OPENING PROCEDURE

4.29 Sealed and properly identified Proposer’s Responses for this RFP entitled HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES will be received by Jonathan Yahn, Contracts and Compliance Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and proposal opening identified on page one of this RFP. **We document the receipt by using an atomic clock; an NJPA employee electronically time and date stamps all Proposals immediately upon receipt.** The NJPA Director of Contracts and Marketing, or Representative from the NJPA Proposal Evaluation Committee, will then read the Proposer’s names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Jonathan Yahn 202 12th Street Northeast Staples, MN 56479 or RFP@njpacoop.org to receive a complete copy of this RFP. Method of delivery needs to be indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES. To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

I. NJPA’S RIGHTS RESERVED

4.30.1 Reject any and all Proposals received in response to this RFP;

4.30.2 Disqualify any Proposer whose conduct or Proposal fails to conform to the requirements of this RFP;

4.30.3 Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;

4.30.4 Consider a late modification of a Proposal if the Proposal itself was submitted on time and if the modifications were requested by NJPA and the modifications make the terms of the Proposal more favorable to NJPA, and accept such Proposal as modified;

4.30.5 At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;

4.30.6 Extend the Contract, in increments determined by NJPA, not to exceed a total contract term of five years; and

4.30.7 Cancel the Request for Proposal at any time and for any reason with no cost or penalty to NJPA.

4.30.8 Correct or amend the RFP at any time with no cost or penalty to NJPA. If NJPA should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Awarded Vendor, all Proposers will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. NJPA will not be liable for any errors in the RFP or other responses related to the RFP.

4.30.9 Extend proposal due dates.

5 **PRICING**

5.1 NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

5.2 RFP is an Indefinite Quantity Equipment/Products and Related Service Price and Program Request with potential national sales distribution and service. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD or thumb drive along with other requested information as a part of a Proposer's Response.

5.3 Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with any purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

5.4 All Proposers will be required to submit "Primary Pricing" in the form of either "Line-Item Pricing," or "Percentage Discount from Catalog Pricing," or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies such as but not limited to "Hot List," "Sourced Product/Equipment" and "Volume Discounts," as well as financing options such as leasing. All pricing documents should include an effective date, preferably in the top right corner of the first page of each pricing document.

A. LINE-ITEM PRICING

5.5 A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products/equipment and/or related services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products/equipment and prices are individually identified however, Proposers with a large number of products/equipment to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and increase the clarity of the contract pricing format.

5.6 All Line-Item Pricing items must be numbered, organized, sectioned, including SKU's (when applicable) and easily understood by the Evaluation Committee and members.

5.7 Submit Line-Item Pricing items in an Excel spreadsheet format and include all appropriate identification information necessary to discern the line item from other line items in each Responder's proposal.

5.8 The purpose for a searchable excel spreadsheet format for Line-Item Pricing is to be able to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products/equipment and related services.

5.9 All products/equipment and related services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

5.10 Proposers are asked to provide both a published “List” price as well as a “Proposed Contract Price” in their pricing matrix. Published List price will be the standard “quantity of one” price currently available to government and educational customers excluding cooperative and volume discounts.

B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

5.11 A specific percentage discount from a Catalog or List price” defined as a published Manufacturer’s Suggested Retail Price (MSRP) for the products/equipment or related services being proposed.

5.12 Individualized percentage discounts can be applied to any number of defined product groupings.

5.13 A Percentage Discount from MSRP may be applied to all elements identified in MSRP including all Manufacturer Options applicable to the equipment/products or related services.

5.14 When a Proposer elects to use “Percentage Discount from Catalog or Category,” Proposer will be responsible for providing and maintaining current published MSRP with NJPA and must be included in their proposal and provided throughout the term of any Contract resulting from this RFP.

C. COST PLUS A PERCENTAGE OF COST

5.15 Cost plus a percentage of cost as a primary pricing mechanism is not desirable.

D. HOT LIST PRICING

5.16 Where applicable, a Vendor may opt to offer a specific selection of products/services, defined as Hot List pricing at greater discounts or related advantages than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Equipment/products and related services may be added or removed from the “Hot List” at any time through an NJPA Price and Product Change Form.

5.17 Hot List program and pricing when applicable may also be used to discount and liquidate close-out and discontinued equipment/products and related services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

E. CEILING PRICE

5.18 Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

5.19 Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

F. VOLUME PRICE DISCOUNTS / ADDITIONAL QUANTITIES

5.20 Proposers are free to offer volume commitment discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

5.21 Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations, competitively situations and provided the same manufacturer support is available to the Vendor.

5.22 All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor's suppliers.

5.23 The contract awarded vendor will accept orders for additional quantities at the same prices, terms and conditions, providing the NJPA Member exercises the option before a specific date, mutually agreed upon between member and contract awarded vendor at time of original purchase order. Any extension(s) of pricing beyond the specific date shall be upon mutual consent between the NJPA Member and the contract awarded vendor.

G. TOTAL COST OF ACQUISITION

5.24 The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party is the cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user's location. For example, if you are proposing equipment/products FOB Proposer's dock., your proposal should identify your deviation from the "Total Cost of Acquisition" of contracted equipment/products. The Proposal should reflect that the "contract does not provide for delivery beyond Proposer's dock, nor any set-up activities or costs associated with those delivery or set-up activities." In contrast, proposed terms including all costs for product/equipment and services delivered and operational at to the end-user's location would require a disclosure of "None."

H. SOURCED PRODUCT/EQUIPMENT / OPEN MARKET ITEMS

5.25 A Sourced Good or an Open Market Item is a product that a member wants to buy under contract that is not currently available under the Vendor's NJPA contract. This method of procurement can be satisfied through a contract sourcing process. Sourcing options serve to provide a more complete contract solution to meet our members' needs. Sourced items are generally deemed incidental to the total transaction or purchase of contract items.

5.26 NJPA or NJPA Members may request product/equipment and/or related services that are within the related scope of this RFP, which are not included in an awarded Vendor's line-item product/equipment and related service list or catalog. These items are known as Sourced Product/Equipment or Open Market Items.

5.27 An awarded Vendor resulting from this RFP may "Source" equipment/products and related services for NJPA or an NJPA Member to the extent they:

5.27.1 Identify all such equipment, products and services as "Sourced Products/Equipment " or "Open Market Items" on any quotation issued in reference to an NJPA awarded contract, and provided to either NJPA or an NJPA Member; and

5.27.2 Follow all applicable acquisition regulations pertaining to the purchase of such equipment, products and services, as defined by NJPA or NJPA Member receiving quotation from Vendor; and

5.27.3 Ensure NJPA or the NJPA Member has determined the prices as quoted by the Vendor for such equipment, products and services are deemed to be fair and reasonable and are acceptable to the member/buyer; and

5.27.4 Identify all product/equipment sourced as a part of an NJPA contract purchase with all required NJPA reporting and fees applying.

5.28 Cost plus a percentage is an option in pricing of sourced goods.

I. PRODUCT & PRICE CHANGES

5.29 Requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing the NJPA Price and Product Change Request Form (located at the end of this RFP and on the NJPA website) and signature of an authorized Vendor employee. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager and PandP@njpacoop.org.

5.30 NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

5.31 Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

5.32 New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

5.33 ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP. New equipment/products and related services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and related services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and related services generally include new updated models of equipment/products and related services and or enhanced services previously offered which could reflect new technology and improved functionality.

5.34 DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

5.35 PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

5.35.1 *Price decreases:* NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

5.35.2 *Price increases:* Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/product or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed.

Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases. Price increases will not exceed industry standard.

5.36 Submit the following documentation to request a pricing change:

5.36.1 Signed NJPA Price and Product Change Form

5.36.2 Single Statement of Pricing Excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each complete pricing list will be identified by its “Effective Date.” Each successive price listing identified by its “Effective Date” will create a “Product and Price History” for the Contract. Each subsequent pricing update will be saved using the naming convention of “(Vendor Name) pricing effective XX/XX/XXXX.”

5.36.2.1 Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:

5.36.2.1.1 Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.

5.36.2.1.2 Create a historical record of pricing.

5.37 NJPA reserves the right to review additional catalogs being proposed as additions or replacements to determine if the represented products and services reflect and relate to the scope of this RFP. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience.

5.38 Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

5.39 Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

5.40 All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each “Pricing” sheet created as a result of each request for product, service, or pricing change.

5.41 Each subsequent “Single Statement of Product and Pricing” will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a “Single Statement of Product/Equipment and Related Services Contract Price Update”. This pricing update is required at a minimum of once per contract year.

J. PAYMENT TERMS

5.42 Payment terms will be defined by the Proposer in the Proposer’s Response. Proposers are encouraged to offer payment terms through P Card services if applicable.

5.43 If applicable, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used and should identify:

5.43.1 General leasing terms such as:

5.43.1.1 The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and

5.43.1.2 The index rate being adjusted; and

5.43.1.3 The “Purchase Option” at lease maturity (\$1, or fair market value); and

5.43.1.4 The available term in months of lease(s) available.

5.43.2 Leasing company information such as:

5.43.2.1 The name and address of the leasing company; and

5.43.2.2 Any ownership, common ownership, or control between the Proposer and the Leasing Company.

K. SALES TAX

5.44 Sales and other taxes shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to the Vendor. When ordering, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

L. SHIPPING

5.45 NJPA desires an attractive freight program. A shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of equipment/products. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. COD orders will be accepted if both parties agree. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order.

5.46 Selection of a carrier for shipment or expedited shipping will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the party who requested.

5.47 Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

5.48 All shipping and re-stocking fees must be identified in the price program. Certain industries providing made to order product/equipment may not allow returns. Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects.

5.49 Proposer agrees shipping errors will be at the expense of the Vendor.

5.50 Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

5.51 Delivered products/equipment must be properly packaged. Damaged equipment/products will not be accepted, or if the damage is not readily apparent at the time of delivery, the equipment/products shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the equipment/products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the equipment/products at the time of delivery.

5.52 Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA or the NJPA Member.

5.53 NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior equipment/products which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of non-conforming equipment/products, NJPA Member will notify the Vendor as soon as possible and the Vendor will replace non-conforming equipment/products with conforming equipment/products acceptable to the NJPA member.

5.54 Throughout the term of the Contract, Proposer agrees to pay for return shipment on equipment/products that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged equipment/products.

5.55 Vendor may not substitute equipment/products unless agreed to by both parties.

5.56 Unless contrary to other parts of this solicitation, if the product/equipment or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

6 EVALUATION OF PROPOSALS

A. PROPOSAL EVALUATION PROCESS

6.1 The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee establishes both the evaluation criteria and designates the relative importance of those criteria by assigning possible scores for each category on Form G of this RFP.

6.2 NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities. Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

6.3 Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under "Proposer Responsiveness."

B. PROPOSER RESPONSIVENESS

6.4 All responses are evaluated for level one and level two responsiveness. If a response does not reasonably and substantially conform to all the terms and conditions in the solicitation or it requests unreasonable exceptions, it may be considered non-responsive.

6.5 All proposals must contain answers or responses to the information requested in the proposal forms. The following items constitute the test for "Level One Responsiveness" and are determined on the proposal opening date. If these are not received, your response may be disqualified as non-responsive.

6.6 Level One Responsiveness includes:

- 6.6.1** received prior to the deadline for submission or it will be returned unopened;
- 6.6.2** properly addressed and identified as a sealed proposal with a specific opening date and time;
- 6.6.3** pricing document (with apparent discounts), sample certificate of liability insurance and all forms fully completed even if “not applicable” is the answer;
- 6.6.4** original signed, completed and dated RFP forms C, D, and F hard copy signed signature page Only from forms A and P from this RFP and if applicable, all counter signed addenda issued in relation to this RFP;
- 6.6.5** an electronic copy (CD or flash drive) of the entire response; and
- 6.6.6** falls within the scope as determined by the NJPAs Proposal Evaluation Committee.

6.7 “Level Two” responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance and each item may encompass multiple areas of information requested. Any questions not answered will result in a loss of points from relevant Form G criteria and may lead to non-award if too many areas are unanswered resulting in the inability for evaluation team to effectively review your response.

C. PROPOSAL EVALUATION CRITERIA

6.8 Evaluation Criteria: Forms A and P includes a series of questions encompassing, but not limited to, the following categories:

- 6.8.1** Company Information & Financial Strength
- 6.8.2** Industry Requirements & Marketplace Success
- 6.8.3** Ability to Sell & Deliver Service Nationwide
- 6.8.4** Marketing Plan
- 6.8.5** Other Cooperative Procurement Contracts
- 6.8.6** Value Added Attributes
- 6.8.7** Payment Terms & Financing Options
- 6.8.8** Warranty
- 6.8.9** Equipment/Products/Services
- 6.8.10** Pricing & Delivery
- 6.8.11** Industry Specific Items

6.9 Evaluation of each Proposer’s Response will take into consideration as a minimum response but not necessarily limited to these items.

D. OTHER CONSIDERATION

6.10 The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the equipment/products and/or related services.

6.11 NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

6.12 If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

6.13 NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

6.14 Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

6.15 NJPA shall reserve the right to reject any or all proposals.

E. COST COMPARISON

6.16 NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

6.17 This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit cost will be used as a basis for determining the point value. The "Market Basket" will be selected by NJPA from all product categories as determined appropriate by NJPA.

F. MARKETING PLAN

6.18 A key element of an NJPA awarded a contract will be based on your marketing response to this solicitation. An awarded Vendor's sales force will be the primary source of communication to the customers and NJPA members directly relating to the contract success. Success in marketing is dependent on delivery of messaging and communication relating to the contract value, knowledge of contract, proper use and the delivery of contracted equipment/products and related services to the end user. Much of the success and sales reward is a direct result of the commitment to the Contract by the vendor and sales teams. NJPA reserves the right to deem a proposer non-responsive or to not award based on an unacceptable or incomplete marketing plan

6.19 NJPA marketing expectations include:

6.19.1 Vendors ability to demonstrate the leveraging of a national sales force and/or dealer network. Vendors must demonstrate the ability to sell, service and deliver products and equipment through acceptable distribution channels to customers and NJPA members in all 50 states. Demonstrate fully the sales and service capabilities of your company through your response; outline Vendor's national sales force network in terms of numbers and geographic location and method of distribution of the equipment/products and related services. Service may be independent of the equipment/product sales pricing but is encouraged to be a part of your response and contract.

6.19.2 Vendor is invited to demonstrate the ability to successfully market, promote and communicate the opportunity of an NJPA contract to current and potential members nationwide. NJPA desires a marketing plan that communicates the value of the contract to members.

6.19.3 Vendor is expected to be receptive to NJPA sales trainings. Vendor shall provide a venue for appropriate personnel from both management and the sales force who will be trained. NJPA commits to providing contract sales training and awareness regarding all aspects of communicating the value of the contract itself including: the authority of NJPA to offer the contract to its Members, value and utility the contract delivers to NJPA Members, scope of NJPA Membership, authority of NJPA Members to utilize NJPA procurement contracts, marketing and sales methods, and overall vertical strategies.

6.19.4 Vendor is expected to demonstrate the intent to a commit to full embracement of the NJPA contract. Identify the appropriate levels of sales management and sales force that will need to understand the value of and the internal procedures necessary, to deliver the NJPA contract solution and message to NJPA and NJPA Members. NJPA shall provide a general schedule and a variety of methods surrounding when and how those individuals will be trained.

6.19.5 Vendor will outline their proposed involvement in the promotion of a contract resulting from this RFP through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows.

6.19.6 Vendor must exhibit the willingness and ability to actively market and develop contract specific marketing materials including, but not limited to:

6.19.6.1 Complete Marketing Plan. Proposer shall submit a marketing plan outlining how the Vendor will launch the NJPA contract to current and potential NJPA Members. NJPA requires the Awarded Vendors to embrace and actively promote the Contract in cooperation with the NJPA.

6.19.6.2 Printed Marketing Materials. Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logo and contact information to be used in the NJPA directory and other approved marketing publications.

6.19.6.3 Contract announcements and advertisements. Proposer will outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals and other direct or indirect marketing activities promoting the awarded NJPA contract.

6.19.6.4 Proposer's Website. Proposer will identify how an Awarded Contract will be displayed and linked on the Proposer's website. An on-line shopping experience for NJPA Members is desired when applicable.

6.19.7 An NJPA Vendor Contract Launch will be scheduled during a reasonable time frame after the award and held at the NJPA office in Staples, MN.

6.20 Proposer shall identify their commitment to develop a sales/communication process to facilitate NJPA membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA.

G. CERTIFICATE OF INSURANCE

6.21 Vendors shall provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance or an ACCORD binder form with their proposal. Upon Award issued pursuant to

this contract and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of a Certificate of Insurance identifying the coverage required below and identifying NJPA as a “Certificate Holder.” Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

6.22 Any exceptions and/or assumptions to the insurance requirements **must** be identified on **Attachment C**. Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, NJPA will not consider any additional exceptions and/or assumptions during negotiations. Upon contract award, the successful vendor **must** provide the Certificate of Insurance identifying the coverage as specified.

6.23 Insurance Liability Limits: The awarded vendor must maintain, for the duration of its contract, \$1.5 million in General Liability insurance coverage or General Liability insurance in conjunction with an Umbrella for a total combined coverage of \$1.5 million. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

6.23.1 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.

6.23.1.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

6.23.1.2 Each Occurrence

\$1,500,000

6.24 Insurance Requirements: The limits listed herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. NJPA in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.

6.25 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an “A.M. Best” rating of not less than A- VII. NJPA in no way warrants that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

6.26 Subcontractors: Vendors’ certificate(s) shall include all subcontractors as additional insureds under its policies **or** Vendor shall furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

H. ORDER PROCESS AND/OR FUNDS FLOW

6.27 Please propose an order process and funds flow. The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP. Administrative fees may also be used for purposes as allowed by Minnesota State Law and approved by the Board of Directors.

6.28 Additional Terms and Conditions can be added at the PO level if both Vendor and Member agree.

I. ADMINISTRATIVE FEES

6.29 Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

6.29.1 Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction; and

6.29.2 Included in, and not added to, the pricing included in Proposer's Response to the RFP; and

6.29.3 Designed to offset the anticipated costs of NJPA's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP. Administrative fees may also be used for other purposes as allowed by Minnesota law. Administrative fees may also be used for other purposes as allowed by Minnesota law.

6.29.4 Typical administrative fees for a B-TO-G order process and funds flow is 2.0%. NJPA does not mandate a specific fee percentage, we merely state that 2% is a typical fee across our contracts. The administrative fee percent varies among vendors, industries and responses.

6.29.5 NJPA awarded contract holder is responsible for the Administrative Fee and related reporting.

6.30 The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire Form P.

J. VALUE ADDED

6.31 Examples of Value Added Attributes: Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be "Value Added Services" for products where a typical buyer may not have the ability to perform these functions.

6.32 Where to document Value Added Attributes: The opportunity to indicate value added dimensions and such advancements will be available in the Proposer's Questionnaire and Proposer's product and service submittal.

6.33 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES and advances to provide products/services, supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

6.34 Minority, Small Business, and Women Business Enterprise (WMBE) participation: It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. NJPA is committed to

facilitating the realization of such “Credits” through certain structuring techniques for transactions resulting from this RFP.

6.35 Environmentally Preferred Purchasing Opportunities: There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. “Green” characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as “green” and by which certifying agency.

6.36 On-Line Requisitioning systems: When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

6.37 Financing: The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

6.38 Technology: Technological advances, increased efficiencies, expanded service and other related improvements beyond today’s NJPA member’s needs and applicable standards.

K. WAIVER OF FORMALITIES

6.39 NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

7 POST AWARD OPERATING ISSUES

A. SUBSEQUENT AGREEMENTS

7.1 Purchase Order. Purchase Orders for equipment/products and/or related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor’s sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase Orders that “This purchase order is issued pursuant to NJPA procurement contract #XXXXXX.” A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

7.2 Governing Law. Purchase Orders shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

7.3 Additional Terms and Conditions. Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

7.4 Specialized Service Requirements. In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

7.5 Performance Bond. At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

B. NJPA MEMBER SIGN-UP PROCEDURE

7.6 Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the Member or the Vendor.

C. REPORTING OF SALES ACTIVITY

7.7 A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will be provided by NJPA to include, but not limited to, name and address of purchasing agency, member number, amount of purchase, and a description of the items purchased.

7.7.1 Zero sales reports: Awarded Vendors are responsible for providing a quarterly sales report of contract sales every quarter regardless of the existence or amount of sales.

D. AUDITS

7.8 No more than once per calendar year during the Contract term, Vendor may be required to make available to NJPA the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract. NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged under of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

E. HUB PARTNER

7.9 Hub Partner: NJPA Members may request to be served through a “Hub Partner” for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits or other considerations.

7.10 Hub Partner Fees: Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and to the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is “Executed for the Benefit of [NJPA Member Name].”

F. TRADE-INS

7.11 The value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified “Trade-In” value shall be viewed as a down payment and credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration.

G. OUT OF STOCK NOTIFICATION

7.12 Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s). The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order. Under no circumstance is Proposer permitted to make unauthorized substitutions. Unfilled or substituted item(s) shall be indicated on the packing list.

H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

7.13 NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure. Some examples of material breach include, but are not limited to:

- 7.13.1** The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;
- 7.13.2** The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;
- 7.13.3** NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance and Vendor fails to respond;
- 7.13.4** The Vendor fails to observe any of the material terms and conditions of the Contract;
- 7.13.5** The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- 7.13.6** The Vendor fails to report quarterly sales;
- 7.13.7** The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.

7.13.8 In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

7.14 Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section. If the issue is not resolved within sixty (60) days, contract will be terminated.

7.15 Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

7.16 NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Awarded Vendor will be responsible for disclosing to NJPA any litigation, bankruptcy or suspensions/disbarments that occur during the contract period. Failure to disclose may result in an immediate termination of the contract.

7.17 NJPA may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

7.18 NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

7.19 Events of Automatic termination to include, but not limited to:

7.19.1 Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,

7.19.2 Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

8 GENERAL TERMS AND CONDITIONS

A. ADVERTISING A CONTRACT RESULTING FROM THIS RFP

8.1 Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

B. APPLICABLE LAW

8.2 **NJPA's interest in a contract resulting from this RFP:** Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

8.3 NJPA Compliance with Minnesota Procurement Law: NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

8.4 Governing Law with respect to delivery and acceptance: All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

8.5 Jurisdiction: Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota unless otherwise agreed to.

8.5.1 Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

8.6 Vendor Compliance with applicable law: Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

8.7 Other Laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

8.8 Indemnity: Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

8.9 Prevailing Wage: It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

8.10 Patent and Copyright Infringement: If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and hold harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

C. ASSIGNMENT OF CONTRACT

8.11 No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. NJPA shall notify members by posting approved assignments on the NJPA website (www.njpacoop.org) within 15 days of NJPA's approval.

8.12 If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

D. LIST OF PROPOSERS

8.13 NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

8.14 The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

F. DATA PRACTICES

8.15 All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be nonpublic information, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

8.15.1 make the request within thirty days of award/non-award, and include the appropriate statutory justification. Pricing is generally not redactable. The NJPA Legal Department shall review the statement to determine whether the information shall be withheld. If the NJPA determines to disclose the information, the Bids & Contracts department of the NJPA shall inform the Proposer, in writing, of such determination; and

8.15.2 defend any action seeking release of the materials it believes to be nonpublic information, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

8.16 This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the confidential information is in possession of the NJPA. When the situation warrants, Proposer may be able redact additional nonpublic information after the evaluation process if legal justification is provided and accepted by NJPA.

G. ENTIRE AGREEMENT

8.17 The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract. A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award & Acceptance document (Form E).

H. FORCE MAJEURE

8.18 Except for payments 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 due to 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 including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to

commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

I. GRATUITIES

8.19 NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA.

J. HAZARDOUS SUBSTANCES

8.20 Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA's Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

K. LICENSES

8.21 Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

8.22 All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

L. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

8.23 The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

M. NON-WAIVER OF RIGHTS

8.24 No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

N. PROTESTS OF AWARDS MADE

8.25 Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. A protest must include:

8.25.1 The name, address and telephone number of the protester;

8.25.2 The original signature of the protester or its representative (you must document the authority of the Representative);

8.25.3 Identification of the solicitation by RFP number;

8.25.4 Identification of the statute or procedure that is alleged to have been violated;

8.25.5 A precise statement of the relevant facts;

8.25.6 Identification of the issues to be resolved;

8.25.7 The aggrieved party's argument and supporting documentation;

8.25.8 The aggrieved party's statement of potential financial damages; and

8.25.9 A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

O. SUSPENSION OR DISBARMENT STATUS

8.26 If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

P. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

8.27 An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

8.28 Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

Q. SEVERABILITY

8.29 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

R. RELATIONSHIP OF PARTIES

8.30 No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

[THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.]

**Form A**

PROPOSER QUESTIONNAIRE- General Business Information
*(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)*

Proposer Name: _____ Questionnaire completed by: _____

Please identify the person NJPA should correspond with from now through the Award process:

Name: _____ E-Mail address: _____

Provide an answer to all questions directly below each question (do not leave blank, mark NA if not applicable) and address all requests made in this RFP. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators. ***Please use the Microsoft Word document version of this questionnaire to respond to the questions contained herein.***

Company Information & Financial Strength

- 1) Why did you respond to this RFP?
- 2) What are your company's expectations in the event of an award?
- 3) Provide the full legal name, address, tax identifications number, and telephone number for your business.
- 4) Demonstrate your financial strength and stability.
- 5) Are you now, or have you ever been the subject of a bankruptcy action? Please explain.
- 6) Provide a brief history of your company that includes your company's core values and business philosophy.
- 7) How long has your company been in the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry?
- 8) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?
 - a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
 - b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.
 - c) Are these individuals your employees, or the employees of a third party?
 - d) If applicable, is the Dealer Network independent or company owned?
- 9) Please provide your bond rating, and/or a credit reference from your bank.
- 10) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.
- 11) Provide a detailed explanation outlining licenses and certifications both required to be held, and actually held, by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
- 12) Provide all "Suspension or Disbarment" information as defined and required herein.
- 13) In addition to the \$1.5 million in General Liability and/or in conjunction with umbrella insurance coverage, what level of automobile and workers compensation insurance does your organization currently have? If none, please explain.
- 14) Within the RFP category there is potential to be several different sub-categories of solutions; list sub category title/s that best describe your equipment/products, services and supplies.

Industry Requirements & Marketplace Success

- 15) List and document recent industry awards and recognition.
- 16) Supply three references/testimonials from customers of like status to NJPA Members to include Government and Education agencies. Please include the customer's name, contact, and phone number.

- 17) Provide a list of your top 5 Government and/or Education customers (entity name is optional) including: entity type, the state the entity is located in, scope of the project/s, size of transaction/s and dollar volumes from the past 3 fiscal years.
- 18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually.

Proposer's Ability to Sell and Deliver Service Nationwide

- 19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?
- 20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?
- 21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?
- 22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?
- 23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.
- 24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.
- 25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)
- 26) Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

Marketing Plan

- 27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.
- 28) Describe how you would market/promote an NJPA Contract nationally to ensure success.
- 29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. Please send a few representative samples of your marketing materials in electronic format.
- 30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness.
- 31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
- 32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
- 33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract
- 34) Do you view your products/equipment applicable to an E-procurement ordering process?
☐ Yes ☐ No
 - a) If yes, describe examples of E-procurement system/s or electronic marketplace solutions that your products/equipment was available through. Demonstrate the success of government and educations customers to ordering through E-procurement.
- 35) Please describe how you will communicate your NJPA pricing and pricing strategy to your sales force nationally?

Other Cooperative Procurement Contracts

- 36) Describe your level of experience with national, state and local cooperative contracts.
- 37) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question.
- 38) Identify any GSA Contracts held or utilized by the Proposer.

- 39) What is the annual combined dollar sales volume for each of these contracts?
- 40) If you are awarded the NJPA contract, are there any market segments or verticals (e.g., higher education, K-12 local governments, non-profits etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.
- 41) How would you leverage an NJPA awarded contract in your sales process?
- 42) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

Value Added

- 43) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? ____ Yes ____ No
- 44) Is this training standard as a part of a purchase or optional?
- 45) Describe current technological advances your proposed equipment/products and related services offer.
- 46) Describe your "Green" program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).
- 47) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.
- 48) Identify any other unique or custom value added attributes of your company or your products/equipment or related services. What makes your proposed solutions unique in your industry as it applies to NJPA members?
- 49) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition?
- 50) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.
- 51) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.
- 52) Describe any unique distribution and/or delivery methods or options offered in your proposal.

NOTE: Questions regarding Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, and Industry Specific Items are addressed on Form P.

Signature: _____ Date: _____

**Form B****PROPOSER INFORMATION**

Company Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Toll Free Number: _____ E-mail: _____

Web site: _____

Voids sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

COMPANY PERSONNEL CONTACTS**Authorized Signer for your organization*:**

Name: _____

Email: _____ Phone: _____

* By executing Form F, the "Proposer's Assurance of Compliance," you are certifying this person identified here has their authorization to sign on behalf of your organization:

Author of your proposal response

Name: _____ Title: _____

Email: _____ Phone: _____

Your Primary Contact person regarding your proposal:

Name: _____ Title: _____

Email: _____ Phone: _____

Other important contact information:

Name: _____ Title: _____

Email: _____ Phone: _____

Name: _____ Title: _____

Email: _____ Phone: _____

Form C**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS
AND SOLUTIONS REQUEST**

Company Name: **John Deere Construction Retail Sales** a division of **John Deere Shared Services, Inc.**

Note: **Original must be signed** and inserted in the inside front cover pouch.

Any exceptions to the Terms, Conditions, Specifications, or Proposal Forms contained herein shall be noted in writing and included with the proposal submittal. Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA and may or may not be included in the final contract. NJPA may clarify exceptions listed here and document the results of those clarifications in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	NJPA ACCEPTS
3.22/6 3.14/6	Unless stated otherwise, a manufacturer...proposer is assumed to have a documented relationship with their dealer network where that dealer network is...authorized to accept, purchase orders pursuant to any contract resulting from this RFP on behalf of the manufacturer. Any such dealer will be considered a sub-contractor of the proposer.	RESCIND. "Subcontractor" does not apply to our dealer network. Dealers are not authorized to accept or process purchase orders resulting from this RFP. All POs will be processed through the Moline JDCRS office. John Deere partners with independently owned dealers that are bound by a dealer agreement. That being said, John Deere is not responsible for the acts and conduct of the dealer network.	
5.45/20	It is the desire that delivery be made within ninety-days (90) of the receipt of the Purchase Order.	JDCRS will make every effort to deliver ordered items in as timely a fashion as possible. Actual delivery cannot be defined ahead of time as warehouse dates are assigned based on number of orders placed on the factory, logistics assignment, transit time to local dealer, inspection/setup by local dealer and final delivery to end user. In most cases, goods are delivered within 90 days, but there will be exceptions from time to time.	
3.14/6	Unless stated otherwise, a manufacturer...proposer is assumed to have a documented relationship with their dealer network where that dealer network is...authorized to accept, purchase orders pursuant to any contract resulting from this RFP on behalf of the manufacturer. Any such dealer will be considered a sub-contractor of the proposer	"Subcontractor" does not apply to our dealer network. John Deere partners with independently owned dealers that are bound by a dealer agreement. That being said, John Deere is not responsible for the acts and conduct of the dealer network JDCRS has decided to permit authorized John Deere Dealers to quote, accept purchase orders, and invoice the NJPA customer. John Deere Dealership's will have a choice to either process an NJPA order from quote through invoicing or continue to utilize JDCRS's historical ordering	

		process. See attached letter.	

Proposer's Signature:**Date:** 23Oct2015



Mark R. Deakyne

1515 5th Avenue
Moline, IL 61265

October 12, 2015

Phone: (309) 765-0924

National Joint Powers Alliance

202 12th Street Northeast
Staples, MN 56479

Reference: National Joint Powers Alliance (NJPA) Contract Number: 032515-JDC
Contract Expiration: May 18, 2019

John Deere Construction Retail Sales (JDCRS) a division of John Deere Shared Services, Inc. respectfully requests to rescind our "Subcontractor" exception listed on Form C of the reference contract.

After thoughtful consideration John Deere Construction Retail Sales has decided to permit authorized John Deere Dealers to quote, accept purchase orders, and invoice the NJPA customer. John Deere Dealership's will have a choice to either process an NJPA order from quote through invoicing or continue to utilize JDCRS's historical ordering process.

Dealerships will be authorized to employ the order process once the following conditions are met:

1. Understand Terms and Conditions of Reference Contract
2. Agree to the Collection of 1% Administration Fee by JDCRS
3. Obtain and Submit Certificate of Insurance (COI)

JDCRS will maintain and submit to NJPA a list of authorized dealers and the dealership COIs. Also JDCRS will continue to submit sales reports and administration fee per reference contract Terms and Conditions.


Mark R Deakyne
Contract Manager
John Deere Construction and Forestry Company

**Contract Award
RFP 032515 #**

FORM D



Formal Offering of Proposal
(To be completed Only by Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES
In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: John Deere Construction Retail Sales Date: March 18, 2015

Company Address: 1515 Fifth Avenue

City: Moline State: IL Zip: 61265

Contact Person: Mark R. Deakyne Title: Contract Manager

Authorized Signature (ink only):

Mark R. Deakyne
(Name printed or typed)

Form E



Contract Acceptance and Award

(To be completed only by NJPA)

**NJPA 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES,
ATTACHMENTS, AND SUPPLIES**
John Deere Construction Retail Sales

Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 19th, 20 15 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature:

NJPA Executive Director

Dr. Chad Coquette

(Name printed or typed)

Awarded this

19th

day of

May

, 20

15NJPA Contract Number 032515-JDC

NJPA Authorized signature:

NJPA Board Member

Scott VernonScott Vernon

(Name printed or typed)

Executed this

19th

day of

May

, 20

15NJPA Contract Number 032515-JDC

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name John Deere Construction Retail Sales a division of John Deere Shared Services, Inc.

Vendor Authorized signature:

Mark R. Deakyne

Mark R. Deakyne

(Name printed or typed)

Title: Contract ManagerExecuted this Twenty-First day of May

, 20

15NJPA Contract Number 032515-JDC

By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: John Deere Construction Retail Sales a division of John Deere Shared Services, Inc.

Contact Person for Questions: Mark R. Deakyne

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: 1515 Fifth Avenue

City/State/Zip: Moline, IL 61265

Telephone Number: (309) 765-0294 Fax Number: (309) 765-3358

E-mail Address: DeakyneMarkR@JohnDeere.com

Authorized Signature: 

Authorized Name (typed): Mark R. Deakyne

Title: Contract Manager

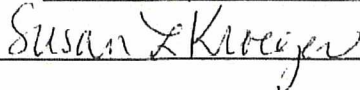
Date: March 18, 2015

Notarized

Subscribed and sworn to before me this 18th day of March, 20 15

Notary Public in and for the County of Rock Island State of Illinois

My commission expires: 10/7/15

Signature: 



Form F**PROPOSER ASSURANCE OF COMPLIANCE****Proposal Affidavit Signature Page****PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any equipment/products and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract; and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition of the Contract sought for by this RFP; and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract; and
4. Neither the Proposer nor any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985; and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal; and
6. If awarded a contract, the Proposer will provide the equipment/products and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation; and
7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract; and
8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed; and

9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP; and
10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders; and
11. The Proposer understands that submitted proposals which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “nonpublic” **will not** be accepted by NJPA. Pursuant to Minnesota Statute §13.37 only specific parts of the proposal may be labeled a “trade secret.” All proposals are nonpublic until the contract is awarded; at which time, both successful and unsuccessful vendors’ proposals become public information.
12. The Proposer understands and agrees that NJPA will not be responsible for any information contained within the proposal.
13. By signing below, the Proposer understands it is his or her responsibility as the Vendor to act in protection of labeled information and agree to defend and indemnify NJPA for honoring such designation. Proposer duly realizes failure to so act will constitute a complete waiver and all submitted information will become public information; additionally failure to label any information that is released by NJPA shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: _____

Contact Person for Questions: _____

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Authorized Signature: _____

Authorized Name (typed): _____

Title: _____

Date: _____

Notarized

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public in and for the County of _____ State of _____

My commission expires: _____

Signature: _____

Form G**OVERALL EVALUATION AND CRITERIA**

For the Proposed Subject **HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES**

Conformance to Terms & Conditions	50	
Financial, Industry Requirements & Marketplace Success	75	
Proposer's Ability to Sell and Deliver Service Nationwide	100	
Proposer's Marketing Plan	50	
Value Added Attributes	75	
Warranty	50	
Equipment/Products and Related Services	200	
Pricing	400	
TOTAL POINTS	1000	

Reviewed by: _____ Its _____
 _____ Its _____

**Form P**

PROPOSER QUESTIONNAIRE
Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, Industry Specific

Proposer Name: John Deere Construction Retail Sales a division of John Deere Shared Services, Inc.

Questionnaire completed by: Mark R. Deakyne

Payment Terms and Financing Options

- 1) Identify your payment terms if applicable. (Net 30, etc.)
 JDCRS' only option for payment terms is Net 30 Days.
- 2) Identify any applicable leasing or other financing options as defined herein.
 JDCRS does not play a role in leasing, financing or payment terms other than Net 30 Days.
 John Deere Construction & Forestry does offer financing and leasing options through John Deere Credit. The John Deere Municipal Lease Purchase Plan is a special low-rate financing plan that is designed to provide flexibility of leasing while building equity toward ownership of the John Deere equipment. Any state or local government body, or their political subdivisions, having the power to tax may be eligible for the John Deere Municipal Lease Purchase Plan, subject to approval. John Deere Credit also offers other leasing and financing options for governmental, educational, and non-profit entities, subject to approval. All leasing and financing options are handled through the local dealer and John Deere Credit.
- 3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
 - a. Please specify if you will be including your dealer network in this proposal. If so, please specify how involved they will be. (For example, will the Dealer accept the P.O.?), and how are we to verify the specific dealer is part of your network?
 NJPA member will contact their local dealer for assistance with machine and option selection. Local dealer or NJPA member, at their option, will forward the official quote request to JDCRS. JDCRS will generate official quote and return for confirmation. The JDCRS quote will state that the purchase order is to be made to JDCRS. Dealerships are not authorized to accept purchase orders. We will follow a Business-to-Government order process. NJPA member will submit their purchase order to John Deere Construction Retail Sales for processing, noting the JDCRS quote number and the NJPA contract number on the PO. JDCRS will ship the unit to the local John Deere Dealer. Delivery of product is handled by the designated delivering dealer. JDCRS invoices NJPA member upon product delivery acceptance receipt.
- 4) Do you accept the P-card procurement and payment process?
 JDCRS will accept P-card procurement and payment process.

Warranty

- 5) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.
 US CAN Deere Warranty Statement.pdf is attached.
- 6) Do all warranties cover all products/equipment parts and labor?
 See paragraph A of the attached warranty
- 7) Do warranties impose usage limit restrictions?
 See paragraph D of the attached warranty statement. Usage hours are not limited for most equipment during the standard warranty period, but limitations on usage behaviors are in place.
- 8) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?
 Per paragraph E of the attached warranty statement, John Deere is not responsible for travel time, mileage or service calls by the dealer.
- 9) Please list any other limitations or circumstances that would not be covered under your warranty.

In addition to the information in the attached warranty statement, product warranty is tied to the specific region where a machine was originally marketed, and does not follow the unit if it migrates from one area to another. For example, an authorized John Deere dealer in the U.S. can complete warranty repairs only on a product that was originally marketed within the U.S.

- 10) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?

All geographic regions of the United States are assigned to a John Deere Construction and Forestry Company (JDCFC) dealer. Each dealer has multiple certified technicians to perform warranty repairs.

Equipment/Product/Services, Pricing, and Delivery

- 11) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

John Deere is responding to this RFP with its complete product offering of Heavy and Medium Construction Equipment and Commercial Worksite Products Compact Equipment including standard factory warranty. Current model numbers are indicated in the NJPA Discount Matrix RFP 032515.xls file. These product lines include:

- Articulated Dump Trucks
- Backhoe Loaders
- Compact Track Loaders
- Crawler Dozers
- Crawler Loaders
- Excavators (Deere/Hitachi), [Heavy, Medium, and Compact]
- High-Speed Dozer
- Landscape Loader
- Motor Graders
- Skid Steer Loaders
- Wheel Loaders [Heavy, Medium, and Compact]

- 12) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).

We are offering a percentage discount off list price by product model. The discount will apply to base models and options within a price book section/category that lists a dollar value ("See Parts" items not included). A listing of discounts offered is attached NJPA Discount Matrix RFP 032515.xls file. Although price pages are included with the bid, please be aware that discounts will be calculated based on current pricing at the time an agency requests the quote and will be valid for 30 days. In calculating these discounts we are obligated to make sure they are in line with our GSA contract. Therefore, we are providing NJPA our most favored customer price.

- 13) Please quantify the discount range presented in this response pricing as a percentage discount from MSRP/published list.

The discount range varies from 21% to 43% across all product range. Please see the attached document NJPA Discount Matrix RFP 032515.xls.

- 14) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.

Further to item # 12, we are offering a percentage discount off list price by product model. The List prices can be found in our price pages directory. Price pages are confidential and should not be made available to the general public as part of this submittal. Although price pages are included with the bid, please be aware that discounts will be calculated based on current pricing at the time an agency requests the quote and will be valid for 30 days. Current price pages will be forwarded to NJPA as soon as they are available.

- 15) Propose a strategy, process, and specific method of facilitating "Sourced Equipment/Products and/or related Services" (AKA, "Open Market" items or "Non-Standard Options").

John Deere Construction Retail Sales (JDCRS) can certainly offer "Sourced Goods" to NJPA Members. What NJPA calls "Sourced Goods", John Deere calls non-contract items, allied items, and Dealer provided services. We define non-contract as John Deere items that are not on contract (like parts and catalog items that say "See Parts" in our price pages). Allied equipment is defined as non-John Deere equipment (ex. Bradco Rock Saw). Dealer provided services are items such as "annual PM services and extended warranty". Non-contract, allied, and Dealer provided service items would be sold as "sourced goods" and the price of the item would be negotiated between the John Deere dealer and the NJPA Member. These costs are annotated in the "Custom Jobs" section of the JDCRS Direct Sales Quote.

Sourced goods will appear on the purchase order (PO) with the contract item and would be listed as "Dealer sourced..." For example, a NJPA Member could purchase a John Deere Skid Steer Loader, an extra fuel tank cap (non-contract) and a Bradco Rock Saw (allied) by utilizing the NJPA contract, but the price of the fuel tank cap and rock saw would be determined by the John Deere dealer and both would be listed on the PO as "Dealer sourced fuel cap and Dealer sourced Bradco Rock Saw" items. We successfully use this process on other contracts.

- 16) Describe your NJPA customer volume rebate programs, as applicable.

John Deere Construction Retail Sales does not offer a volume rebate program.

- 17) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.

Set-up and installation fees: Dealer applied charges that cover their costs for installing and ensuring the proper operation of sourced goods and field attachments. The set-up and installation fees are negotiated between the customer and the dealer. These costs are annotated in the "Custom Jobs" section of the JDCRS Direct Sales Quote so are paid to the contract proposer then credited to the dealer.

Pre-Delivery Inspection (PDI): A PDI is performed on all new machine purchases to ensure proper fluid levels, check system pressures, verify accurate system operation, and thoroughly clean the unit prior to customer acceptance. The cost of the PDI is negotiated between the customer and the dealer and will vary by machine model and complexity. The cost of the PDI is annotated in the "Custom Jobs" section of the JDCRS Direct Sales Quote so is paid to the contract proposer then credited to the dealer.

- 18) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

JDCRS believes that charging the corporate contracted freight rates for each and every sale is most equitable due to the known sizes & weights and unknown distances that goods will travel to reach the NJPA members' local John Deere Dealership. All shipments will therefore be FOB Destination Pre-Paid Added - freight will be quoted at time of machine inquiry and annotated as a line item on the JDCRS quote. PO payment for both equipment and freight is likewise payable to JDCRS. Buying agency will need to supply the full address for the end-user's location at time of quote request. Should buying agency choose not to use their most local dealer, the preferred dealer needs to be clearly stated on the Purchase Order accordingly.

The dealership may charge a local delivery fee which is negotiated between the customer and the dealer. The cost of the local delivery is annotated in the "Custom Jobs" section of the JDCRS Direct Sales Quote so is paid to the contract proposer then credited to the dealer. The NJPA customer has the option of accepting delivery at the dealership negating any local delivery fee.

This same policy will adhere for shipments to Alaska and Hawaii.

- 19) As an important part of the evaluation of your offer, indicate the level of pricing you are offering.

Prices offered in this proposal are:

- ☐ a. Pricing is the same as typically offered to an individual municipality, Higher Ed or school district.
- ☒ b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
- ☐ c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
- ☐ d. Other; please describe.

- 20) Do you offer quantity or volume discounts?

☒ YES ☐ NO Outline guidelines and program.

For each batch of orders quoted/received at the same time, from the same buying entity, the following volume discounts will be apply:

2-4 Machines 1.5%
 5-7 Machines 3.5%
 8-14 Machines 5%
 15-30 Machines 7%

- 21) Describe in detail your proposed exchange and return program(s) and policy(s).

John Deere equipment is made to order, and therefore, Exchanges and Returns are not permitted.

- 22) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services

As defined in item number 18, we will provide an integrated quote to the customer for the full delivered freight along with the machine and/or attachment requested. Freight is in addition to the machine price, does not receive the equipment discount, and must be included on the same PO to JDCRS as the equipment. John Deere equipment is made to order, and therefore, Exchanges and Returns are not permitted. These rules apply to all NJPA buying agencies, whether located in the continental United States or in Alaska or Hawaii.

- 23) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NJPA. Please be as specific as possible.

All quotes are created through our office. This central point nearly eliminates inaccuracies subject to a nationwide dealer network. Purchase orders are processed through our office as well. The purchase orders are reviewed by the account manager for accuracy. If the purchase order needs to be modified, the change request is submitted prior to commencing the factory ordering process.

Monthly spot checks are performed by our accounting department to ensure the department is compliant with published pricing and published discounts. Additionally, the contract manager audits the accuracy of the contract sales and administrative funding fee recorded by the contract administrator.

Industry-Specific Items

- 24) What is your US market share for the solutions you are proposing in this response?

In the government heavy construction equipment market Deere's share is ~29%.

- 25) Do you hold any industry-specific quality management system certifications such as ISO 9001?

John Deere is registered with the International Standards Organization 9001 for quality management.

- 26) Do you hold any environmental management system certifications such as ISO 14001?

For more information on John Deere's Environmental Stewardship visit:

http://www.deere.com/en_US/corporate/our_company/citizenship/environmental_stewardship/environmental_stewardship.page?

- 27) What is your Canadian market share (if any) for the solutions you are proposing in this response?

Not Applicable

- 28) Is your warranty program handled directly, or does it require a pass through to another manufacturer?

Our warranty program is handled directly through the John Deere Dealerships. The warranty of Sourced Goods will follow the warranty policy for that good.

- 29) For how many years have the models you are proposing in this response been available in the marketplace?

Although the year in the marketplace varies by model, John Deere has been manufacturer heavy construction equipment for nearly seventy years.

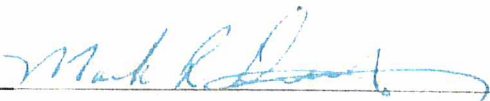
- 30) What is your parts order fill rate?

When unable to provide a part over-the-counter, the local dealer can get the part from a regional or major distribution center. Emergency orders entered by 5 p.m. (Monday - Friday) at your local dealer are shipped the same day from our regional centers. Emergency orders are also shipped during Saturday with no added surcharge. Two levels of emergency backup, FLASH™ and FLASH+™ systems, result in a fill level that exceeds 99%.

- 31) Do you provide preventive maintenance programs for the solutions you are proposing in this response?

Preventative maintenance services are a dealer provided service. Please review Form P item 15 above.

Signature: _____



Date: 18Mar2015



10 PRE-SUBMISSION CHECKLIST

Check when Completed	Contents of Your Bid Proposal	Hard Copy Required Signed and Dated	Electronic Copy Required - CD or Flash Drive
	Form A: Proposer Questionnaire with all questions answered completely	X - signature page only	X
	Form B: Proposer Information		X
	Form C: Exceptions to Proposal, Terms, Conditions, and Solutions Request	X	X
	Form D: Formal Offering of Proposal	X	X
	Form E. Contract Acceptance and Award		X
	Form F: Proposers Assurance of Compliance	X	X
	Form P: Proposer Questionnaire with all questions answered completely	X-signature page only	X
	Certificate of Insurance with \$1.5 million coverage	X	X
	Copy of all RFP Addendums issued by NJPA	X	X
	Pricing for all Products/Equipment/Services within the RFP being proposed		X
	Entire Proposal submittal including signed documents and forms.		X
	All forms in the Hard Copy Required Signed and Dated should be inserted in the front of the submitted response, unbound.		
	Package containing your proposal labeled and sealed with the following language: "Competitive Proposal Enclosed, Hold for Public Opening XX-XX-XXXX"		
	Response Package mailed and delivered prior to deadline to: NJPA, 202 12th St NE, Staples, MN 56479		



11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 1. Instructions For Vendor

Pursuant the NJPA RFP, requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing sections 2, 3 and 4 of the NJPA Price and Product Change Request Form and signature of an authorized Vendor employee in section 5. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager **AND: PandP@njpacoop.org**.

NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

NOTE: New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP.

DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

Price decreases: NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

Price increases: Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/products or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed. Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases.

Refer to section 4 of the RFP for complete "Pricing" details.

Section 2. Vendor Name and Type of Change Request

AWARDED
VENDOR NAME:

NJPA
CONTRACT
NUMBER:

CHECK ALL CHANGES THAT APPLY:

- ☐ Adding Equipment/ Products /Services
- ☐ Deleting/Discontinuing Equipment/Products/Services
- ☐ Price Increase
- ☐ Price Decrease



11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 3. Detailed Explanation of Need for Changes

List equipment/products and/or services that are changing, being added or deleted from previous contract price list along with the percentage change for each item or category. (Attach a separate, detailed document if more than 10 items.)

Provide a general statement and documentation explaining the reasons for these price and/or equipment/product/service changes.

SAMPLES: 1-All paper equipment/products and services increased 5% in price due to transportation and fuel costs (see attached documentation of raw materials increase). 2-The 6400 series floor polisher is added to the product list as a new model replacing the 5400 series. The 6400 series 3% increase reflects technological improvements made that improve the rate of efficiency and useful life. The 5400 series is now included in the "Hot List" at a 20% discount from previous pricing until remaining inventory is liquidated.

If adding equipment/products/services, provide a general statement how these are in the scope.

If changing prices and/or adding equipment/products/services, provide a general statement that the pricing or equipment/products/services is consistent with existing NJPA contract pricing.



11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing including all new and existing equipment/products and services is attached and/or has been emailed to PandP@njpacoop.org.

☐ Yes ☐ No

Section 5. Signatures

Vendor Authorized Signature Date

Print Name and Title of Authorized Signer

NJPA Executive Director Signature Date



Appendix A

NJPA The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, Tribal Government, and all other Public Agencies located nationally in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/Local_Government/Cities.shtml

<http://nces.ed.gov/globallocator/>

<https://harvester.census.gov/imls/search/index.asp>

<http://nccsweb.urban.org/PubApps/search.php>

<http://www.usa.gov/Government/Tribal-Sites/index.shtml>

<http://www.usa.gov/Agencies/State-and-Territories.shtml>

<http://www.nreca.coop/about-electric-cooperatives/member-directory/>

[Oregon](#)

[Hawaii](#)

[Washington](#)

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
RDO CONSTRUCTION EQUIPMENT CO.
D/B/A RDO EQUIPMENT CO.

[Quote]

See following pages.


JOHN DEERE

Investment Proposal (Quote)

RDO Equipment Co.
5500 East Penstock Avenue
Flagstaff AZ, 86004
Phone: (928) 526-0639 - Fax: (928) 526-2498

Proposal for:
TOWN OF CHINO VALLEY
1982 N VOSS DR
DEPT 201
CHINO VALLEY, AZ, 863237630
YAVAPAI

Investment Proposal Date: 9/18/2018
Pricing Valid Until: 10/18/2018
Deal Number: 1118612
Customer Account#: 7140003
Sales Professional: Zachariah Pierson
Phone: (928) 526-0639
Fax: (928) 526-2498
Email: ZPierson@rdoequipment.com

Comments

This 410L is equipped with all items listed on the second page of this document as well as the items listed below.

- On date of delivery, or when specified by management, our product specialist will spend time going over the entire machine with operators and mechanics to provide tips for maintenance and go over all the machines features.
- This machine is covered by an extended COMPREHENSIVE full machine warranty for 60 months / 4000 hours. Additional warranty can be purchased.
- John Deere Link (JD Link) comes equipped for 5 years. This includes a training session by our product specialist. JD Link allows you to generate reports regarding machine performance on a per operator case, create curfews with geo-fences around worksites that will alert the designated point of contact if the machine is removed from area or switched on during restricted hours.
- RDO Promise provides free warranty travel and repair on any item under warranty.
- Machine is equipped with machine security to prevent any unsanctioned usage
- Extended warranties are available for purchase. If not purchased when the machine is bought, you may purchase an extension at any time during the period of warranty. After the warranty is concluded, if you wish to purchase extended, there are options available.

Equipment Information

Quantity	Serial Number	Hours (approx.)	Status / Year / Make / Model Additional Items	Cash Price
1	TBD	0	New 2018 JOHN DEERE 410L Customer Discount NJPA CONTRACT #032515-JDC IS 44% OFF BASE LIST PRICE CUST #58096 Freight In From Factory Freight Out To Town Of Chino Valley Prep / Reconditioning PDI - MACHINE Inspection / Fuel / Def Warranty -John Deere Comprehensive-60 Months, 4000 Hours,Deductible: 200, Exp Date: 9/18/2023	\$189,875.76 (\$79,938.76) \$2,000.00 \$800.00 \$1,000.00 Equipment Subtotal: \$113,737.00

Purchase Order Totals

Balance:	\$113,737.00
Tax Rate 3: (AZFL 8.951%)	\$10,180.60
Sales Tax Total:	\$10,180.60
Sub Total:	\$123,917.60
Cash with Order:	\$0.00
Balance Due:	\$123,917.60

Equipment Options

Qty	Serial Number	Year / Make / Model	Description
1	TBD	2018 JOHN DEERE 410L	0AB0T 410L BACKHOE LOADER 1065 ENGINE FT4 170C JDLINK 5YR TEMP LICENSE 50HR 2035 CAB 2401 DECAL ENG W/ENG PACKET 3065 AXLE MFWD W/LIMITED SLIP 4466 TIRE GAL 21L24 12.5/80-18 5285 CONTROL PILOT 5400 COUPLER LESS 5656 BUCKET HD 24" 7.5CU FT 6020 DIPPER EXTENDABLE 6220 HYD REAR AUX 1WAY FLOW 7025 LDR 1 LEVER, NO AUX 7655 LDR BUCKET 1.5CY LONG LIP 8475 COUNTERWEIGHT 1000LB. 8685 BATTERY DUAL W/JUMP POST 9110 RIDE CONTROL 9116 ROOF W/LED LIGHTS 9210 CONSOLE LH W/CUP HOLDER 9505 MFWD FULL GUARD 9916 RADIO PREMIUM PACKAGE 9919 SUN VISOR 9920 MIRROR EXTERIOR REAR VIEW 9965 SEAT AIR SUSPENSION CLOTH



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

7.e.

Meeting Date: 10/09/2018
Contact Person: John Coomer, Economic Development/Project Manager
 Phone: 928-636-2646 x-1201
Department: Town Manager
Item Type: Action-Presentation
Estimated length of staff presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to approve Agreement between the Greater Prescott Regional Economic Partnership (GPREP) and the Town of Chino Valley for FY 2018/19.

RECOMMENDED ACTION:

Approval of the Agreement between the Greater Prescott Regional Economic Partnership and the Town of Chino Valley for FY 2018/19.

Fiscal Impact

Fiscal Impact?: No
If Yes, Budget Code:
Available:
Funding Source:

Attachments

GPREP Agreement

AGREEMENT BETWEEN THE GREATER PRESCOTT REGIONAL ECONOMIC PARTNERSHIP AND THE TOWN OF CHINO VALLEY

The Council of the Town of Chino Valley has approved participation in and support of the Regional economic development program of the GREATER PRESCOTT REGIONAL ECONOMIC PARTNERSHIP ("GPREP"), an Arizona non-profit corporation. The purpose of this agreement ("Agreement") is to set forth the Regional economic development program that GPREP agrees to undertake, the support that Chino Valley agrees to provide, the respective roles of GPREP and Chino Valley, and the payments of Chino Valley to GPREP for the fiscal year July 1, 2018 - June 30, 2019.

I. RESPONSIBILITIES OF GPREP

- A. **MISSION:** GPREP works with the Quad Cities of Prescott, Prescott Valley, Chino Valley, and Dewey-Humboldt to create a Regional identity in order to make the Region more conducive for local companies seeking to expand and more competitive in the attraction of new quality businesses and capital investment to the Greater Prescott Region ("the Region").
- B. **GOALS:** GPREP is guided by and strategically focused on two specific long-range goals:
 - 1. Marketing the Region to generate qualified business/industry prospects within the targeted economic clusters.
 - 2. Leveraging public and private partners and resources to locate qualified prospects, improve overall competitiveness, and sustain regional vitality.
- C. **RETENTION AND EXPANSION POLICY:**
 - 1. GPREP's primary role is developing the Region's marketing strategy for the attraction of high wage, base industry jobs within defined industry clusters in coordination with representatives of GPREP member communities; therefore, retention and expansion of existing businesses is primarily a local community responsibility.
 - 2. GPREP will support its member communities' efforts to retain and expand existing businesses through coordinating Regional support and providing data for the retention and expansion projects.
 - 3. GPREP will advise its member communities when an existing company contacts GPREP regarding a retention or expansion issue, subject to any legal or contractual non-disclosure obligations.
- D. **ACTION PLAN AND BUDGET:** In accordance with the Mission, Goals and Retention and Expansion Policy set forth above and subject to the availability of adequate funding, GPREP shall implement the Action Plan and Budget adopted by GPREP's Board of Directors. A copy of the **updated 2013-2016 Action Plan** (to be hereunto referenced as the 2016-2019 Strategic Plan) will be available upon request. Chino Valley was informed of any changes in the originally adopted GPREP Action Plan, which will materially affect or alter the priorities established therein. GPREP has

solicited the input of Chino Valley on the update to the existing *2013-2016 Action Plan*.

- E. ECONOMIC DEVELOPMENT SERVICES:** GPREP's implementation of the *2016-2019 Strategic Plan* and economic development services under this Agreement shall be to market the Region and encourage new industries, businesses, services, investments, and resources to locate within the Region. This initiative involves the cooperation and coordination among each member community, local business and organizations. Accordingly, Chino Valley and GPREP covenant and agree to work together in a productive and harmonious manner to further GPREP's mission through the implementation of the goals outlined in the *2016-2019 Strategic Plan*. Chino Valley and GPREP further covenant and agree to comply with the Regional Cooperation Protocol as provided as **Attachment A**.

In the event of changing market conditions, funding availability, unforeseen expenses, or other circumstances beyond GPREP's reasonable control, the strategies outlined in the *2016-2019 Strategic Plan* may be revised with the input and approval from the designated members of GPREP's Economic Development Business Action Team ("BAT"). The BAT is comprised of economic development and management staff from the four municipalities, higher education, economic development organizations, the Yavapai-Prescott Indian Tribe, state agencies, and others involved in the economic development in the Region. GPREP will facilitate monthly meetings with the Business Action team to discuss and make decisions that relate to the implementation of the *2016-2019 Strategic Plan*.

- F. REPORTS:** GPREP shall provide to Chino Valley the following reports and information at scheduled Board and BAT Meetings:
1. A report on achievements outlined in the *2016-2019 Strategic Plan*.
 2. A list of individuals and/or entities inquiring about starting or expanding a business in the Region and any follow-up to those inquiries.
 3. An annual written report to Chino Valley at the end of each fiscal year.
 4. A minimum of one presentation to the Town Council during each fiscal year.

II. RESPONSIBILITIES OF CHINO VALLEY

- A. STAFF SUPPORT:** Chino Valley shall provide staff support to GPREP's economic development efforts as follows:

1. Chino Valley shall provide an economic development representative to the BAT.
2. Chino Valley shall cooperate in the continued improvement on how the Region responds to business inquiries in terms of format, content, and communication.
3. Chino Valley shall respond to leads or prospects referred by GPREP in a professional manner and within the time frame specified by the lead or prospect, if Chino Valley desires to submit a package for consideration as outlined in the Project Tracking Policy (P-Track) provided as **Attachment B**.

When available and applicable, Chino Valley agrees to provide its response in the format developed jointly by the BAT and GPREP.

4. Chino Valley shall provide appropriate local hospitality, tours, and briefings for prospects visiting building and sites within the town limits of Chino Valley.
5. Chino Valley shall respond in a timely manner to any requests by GPREP for information about the town for marketing materials, business development activities, such as trade shows, and business inquiries.
6. In order to enable GPREP to be more sensitive to Chino Valley's internal requirements and operating procedures, Chino Valley may at its sole option, deliver to GPREP copies of any Chino Valley approved economic development strategies, work plan, programs and evaluation criteria. GPREP shall not disclose the same to the other municipalities or participants in GPREP or their representatives.
7. Chino Valley shall utilize its best good faith efforts to appoint an economic development professional to represent Chino Valley at all marketing events and other functions in which Chino Valley has committed itself.
8. Chino Valley agrees to work with GPREP to improve Chino Valley's competitiveness and market readiness to support the growth and expansion of the targeted industries as identified for Chino Valley.

B. RECOGNITION OF GPREP: Chino Valley agrees to recognize GPREP as Chino Valley's officially designated Regional economic development organization for marketing the Region.

III. ADDITIONAL AGREEMENTS OF THE PARTIES

A. PARTICIPATION IN MARKETING EVENTS AND PROVISION OF TECHNICAL ASSISTANCE: Representative(s) of Chino Valley shall be entitled to participate in GPREP's marketing events provided that such participation shall not be at GPREP's expense. When requested and appropriate, GPREP will use its best efforts to provide technical assistance and support to Chino Valley's economic development staff for business prospects identified and qualified by Chino Valley and assist Chino Valley with presentations to the prospect in Chino Valley or the prospect's corporate location.

B. COMPENSATION:

1. Chino Valley agrees to pay **\$0.00** for services to be provided by GPREP pursuant to the Agreement during the fiscal year ending on June 30, 2019, as set forth in this Agreement. The payment by Chino Valley may, upon the mutual and discretionary approval of the board of directors of GPREP and Chino Valley's Council, be increased or decreased from time to time during the term hereof in accordance with the increases or decreases of general application in the per capita payments to GPREP by other local governments which support GPREP.

2. Funding of this Agreement shall be subject to the annual appropriations of funds for this activity by the Chino Valley Council pursuant to the required budget process of Chino Valley.
3. Nothing herein shall preclude Chino Valley from contracting separately with GPREP for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by Chino Valley and GPREP; and GPREP shall submit invoices for payment on a quarterly basis.
4. Agreement Term: Unless otherwise state in this Agreement shall be effective from July 1, 2018 through June 30, 2019.

IV. GENERAL PROVISIONS

- A. COVENANT AGAINST CONTINGENT FEES:** GPREP warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- B. PAYMENT DEDUCTION OFFSET PROVISION:** GPREP recognizes the provisions of Chino Valley Government's code may require that no payment be made to any contractor as long as there is any outstanding obligation due to Chino Valley, and directs that any such obligation may be offset against payment due to GPREP.
- C. ASSIGNMENT PROHIBITED:** No party to this agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and no effect.
- D. INDEPENDENT CONTRACTOR; NO AGENCY:** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between Chino Valley and GPREP. At all times during the term of this Agreement, GPREP shall be an independent contractor and shall not be an employee of Chino Valley. GPREP shall have no authority, express or implied, to act on behalf of Chino Valley in any capacity whatsoever as an agent of Chino Valley. GPREP shall have no authority, express or implied, pursuant to this Agreement to bind Chino Valley to any obligation whatsoever.
- E. COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS REQUIRED.** GPREP understands and acknowledges that it shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances in their performance under this Agreement.
- F. TERMINATION.** Chino Valley shall have the right to terminate this Agreement if GPREP shall fail to duly perform, observe or comply with any covenant, condition or agreement on its part under this Agreement and such failure continues for a period of thirty (30) days (or such shorter period as may be expressly provided herein) after the date on which written notice requiring the failure to be remedied shall have been given to GPREP by Chino Valley; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied which, by their nature, cannot reasonably be

accomplished within thirty (30) days, no event of default shall be deemed to have occurred or to exist if, and so long as, GPREP shall commence such action within that period and diligently and continuously prosecute the same to completion within ninety (90) days or such longer period as Chino Valley may approve in writing. Termination of this Agreement shall be Chino Valley's sole and exclusive remedy arising from a breach of this Agreement by GPREP.

- G. CHINO VALLEY'S REVIEW OF GPREP RECORDS.** GPREP must keep all Agreement records separate and make them available for audit by Chino Valley personnel upon request.
- H. NOTICES.** Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to Town: Cecilia Grittman, Manager
 Town of Chino Valley
 202 North State Route 89
 Chino Valley, Arizona 86323
 Phone: 928-636-2646
 Fax: 928-636-2144

If to GPREP: Julie Pettit, President
 Greater Prescott Regional Economic Partnership
 7351 East Civic Circle, Room 143
 Prescott Valley, Arizona 86314
 Phone: (928) 772-4883
 FAX: (928) 775-6165

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

- I. NO WAIVER.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights hereunder will not operate as a waiver of any such future rights.
- J. SEVERABILITY.** If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.

K. CAPTIONS. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

L. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement and the below listed "Attachments" which are incorporated herein by this reference, constitutes the entire understanding and agreement of the parties.

Attachment A – Regional Cooperation Protocol
Attachment B – P-Track Policy

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Chino Valley or GPREP, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this _____ day of _____, 2018.

Chino Valley, a municipal corporation

By: _____

ATTEST:

By: _____
Its: Jami Lewis, Town Clerk

APPROVED AS TO FORM:

By: _____
Its: Attorney

GREATER PRESCOTT REGIONAL
ECONOMIC PARTNERSHIP, an Arizona
nonprofit corporation

By: _____
Julie Pettit, President

Attachment A: Protocol Agreement

Greater Prescott Regional Economic Partnership and Municipal Members of the Business Action Team (BAT)

The foundation of this document is built on trust and the spirit of Regional cooperation among the entities involved. GPREP and the municipal members of the BAT should work together as partners on projects involving the communities in which GPREP represents, regardless of the source of the lead.

1. GPREP Team Partners will demonstrate a commitment to the positive promotion of the Greater Prescott Region and its member communities in order to establish a globally competitive Region.
2. GPREP Team Partners will maintain the highest standards of economic development prospect handling, including confidentiality, without jeopardizing a prospect's trust in locating within the Region. Partners agree to respect the prospect's request for confidentiality but also agree to notify each other as to the existence, if it does not breach any confidentiality agreement, and shall make a good-faith effort to involve the appropriate state, regional or local partners at the earliest stage possible during the business development discussions.
3. Unless otherwise restricted, agree to coordinate through GPREP for any prospect considering a project in any of the communities that GPREP represents, understanding that GPREP is in a unique position to represent and speak on Regional economic development issues and on characteristics of the Region's economy. Likewise, GPREP recognizes that the Arizona Commerce Authority is the exclusive organization leading the state's economic development efforts and that Arizona Commerce Authority is in a unique position to represent and speak on state incentives, programs and major policy matters. GPREP and Arizona Commerce Authority also acknowledge that communities are in the best position to speak about local incentives and efforts surrounding the local economy.
4. For projects that originate within a within a GPREP member community, GPREP will be available to provide any data and information to add value in the securing of the project. Additionally, GPREP will not P-Track the project unless the community lead makes such a request to do so.
5. GPREP will facilitate a BAT with representation from each of the municipalities, Yavapai-Prescott Indian Tribe, NACOG, Yavapai College, a Chamber of Commerce Representation, ACA, and Utilities.
6. GPREP Team Partners will provide accurate and timely information in response to specific requests by all prospects. When a client has narrowed sites to specific GPREP member communities, GPREP will make a good-faith effort to inform those affected BAT members first. BAT members agree to provide information solely on their own community when the information requested is site-specific (i.e,

cost of land, taxes, development fees, utility availability and cost, zoning process timing, permit timing and local incentives). When site-specific information related to other GPREP communities is requested, BAT members agree to (i) direct GPREP prospects back to GPREP or (ii) direct non-GPREP generated prospects to contact the affected communities directly, and as a courtesy.

7. Prospect source and the determination of any lead prospect will follow the policies of the GPREP P-Track agreement as developed and agreed upon the member communities.
8. Agree that regardless of lead source, public locate announcements shall be coordinated among the company, GPREP member community, and GPREP to reflect inclusiveness and cooperation of all partners.
9. Encourage collaborative efforts to expand or relocate businesses within the Region and prohibit preparatory use of local financial incentives for existing jobs to companies with current operation in another GPREP community.
10. Inform GPREP member community prior to or as soon as possible when a company visits or physical site visit within their community will occur. BAT members will be the primary point of contact for the company when community information is needed.
11. Formalize a process to convene GPREP, Arizona Commerce Authority staff, and BAT member communities semi-annually, and cooperate in the exchange of information and ideas reflecting practices, procedures and policies relating to prospect handling and Regional economic development.
12. Work collectively to maintain a high level of trust and integrity by and between GPREP, Arizona Commerce Authority and the BAT of GPREP member communities.
13. If there is evidence that the protocol has not been followed or a professional conflict arises, the matter will be referred to the BAT. If the matter cannot be resolved by the BAT, the GPREP President will review the matter and may, at his or her discretion, consult or involve the GPREP Board. Disciplinary action may be taken as determined by the Board of Directors.
14. Partners agree to abide by this protocol agreement and uphold the highest standards of Regional economic development cooperation. Partners agree to uphold the highest standards of Regional and statewide economic development cooperation.

Attachment B: Project Tracking (P-Track) Policy

The P-Track is GPREP's standard process of distributing, collecting, and sharing a prospect's request for available real estate with GPREP member communities. The process, as outlined below, is designed to provide value to the Business Action Team (BAT) partners by maintaining an equal opportunity for response by all our member communities in order to give the best information to our prospects within a timely manner. For every prospect/client that requests such assistance, GPREP will, within 24 hours, email a P-Track request to all communities for available real estate and other data needed that matches each client's specifications. It is also agreed that the following scenarios below GPREP will not send or share a P-Track:

- Prospect is already represented by a real estate professional who will be handling the real estate search.
 - Community is the lead, and prospect was brought to GPREP by a local BAT partner.
 - Prospect has asked GPREP not to pursue a real estate search.
- A. The P-Track will be sent to all BAT members unless Prospect has a chosen or narrowed geographic area under consideration. Possible criteria for delivery to less than the full BAT membership include but are not limited to:
1. Proximity to a client;
 2. Vendor;
 3. Airport;
 4. Transportation corridor for export or import;
 5. University/Community College;
 6. Cluster of like businesses; and
 7. Labor Force.
- B. Once the P-Track is sent to the applicable BAT partners, the BAT partners will respond within the timeframe set by the client.
- C. P-Track emails will be retained for three-years after initial send date or 12 months after the project has officially closed. Additionally, GPREP will have electronic or written verification from the prospect if the geographic area for the P-Track is less than full BAT membership.
- D. GPREP will include all properties, submitted by BAT partners, which meet the minimum specifications as outlined by the Prospect. If properties are submitted that do not meet specifications, GPREP will notify the community that the sites were eliminated.
- E. Upon receipt of community submittals from BAT partners, GPREP will compile the available real estate package and send it to the Prospect within one business day.
- F. GPREP will send a new P-Track out for any clients whose real estate requirements have changed in a way that will allow additional community submittals for consideration.
- G. Community disputes on any adherence to this policy will be addressed as outlined in the GPREP Protocol Agreement.



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

8.a.

Meeting Date: 10/09/2018
Contact Person: Cecilia Grittman, Town Manager
Department: Town Manager
Estimated length of Staff Presentation: None

Physical location of item: Public Shooting Range, 3926 Shooting Range Road

AGENDA ITEM TITLE:

An executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position regarding a contract (concessionaire management agreement) with Prescott Sportsmen's Club related to management of the Chino Valley Shooting Facility that is the subject of negotiations. (Cecilia Grittman, Town Manager)

Attachments

No file(s) attached.
