



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL AGENDA

**STUDY SESSION
TUESDAY, OCTOBER 11, 2022
5:00 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; ROLL CALL**
2. Discussion regarding the Town's planning efforts to be undertaken over the next three fiscal years. Plans to be discussed include the General Plan, Utility Rate Study, Infrastructure Improvement Plan, Impact Fee Study, and Integrated Water Master Plan. (Joe Duffy, Administrative Services Director)
3. **ADJOURNMENT**

**REGULAR MEETING
TUESDAY, OCTOBER 11, 2022
6:00 P.M.**

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

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE; ROLL CALL**
- 2. INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**

- a. Pg. 5** Presentation by Morgan O'Connor, ADEQ Community Liaison for Coconino, Mohave & Yavapai Counties, with the Voluntary Environmental Stewardship Program (VESP), Copper Level to Frank Marbury, Public Works Director. (Terri Denemy, Assistant to the Town Manager)

- 3. CALL TO THE PUBLIC- Individuals requesting to speak, please complete a Speaker Comment Card and return to the Clerk.**

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. 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. If listed below, there may also be a presentation on information requested by the Mayor and Council and questions may be answered. No action will be taken.

- a.** Status reports by Mayor and Council regarding current events.
- b.** Status report by Town Manager Cindy Blackmore regarding Town accomplishments, and current or upcoming projects.

- 5. 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. **Pg. 6** Consideration and possible action to approve the August 23, 2022, regular meeting minutes. (Erin N. Deskins, Town Clerk)
- b. **Pg. 18** Consideration and possible action to approve the September 13, 2022, regular meeting minutes. (Erin N. Deskins, Town Clerk)

6. 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. **Pg. 29** Public hearing, consideration and possible action to approve Ordinance No. 2022-923 amending the Town of Chino Valley Unified Development Ordinance, Section 2.1 Definitions, Section 4.5 Yard, Lot and Area Requirements, Section 4.23 Public Street System and Public Access System; and various parts of Section 5 Subdivision Regulations, to ensure internal consistency with recently amended Title V Public Works Chapters 50 and 51 of the Town Code. (Will Dingee, Senior Planner)

Recommended Action: i. Hold Public Hearing ii. Approve Ordinance No. 2022-923 as reflected in Attachment A, subject to the staff report and information provided during this hearing.

- b. **Pg. 49** Consideration and possible action to approve a Cooperative Purchasing Agreement with San Tan Auto Partners for the purchase of a 2023 Ford Police Interceptor Utility vehicle for \$45,216.48 and a Cooperative Purchasing Agreement with Arizona Emergency Products to upfit the vehicle for an amount not to exceed \$25,941.98, for a combined amount of \$71,158.46. (Frank Marbury, Public Works Director/Town Engineer)

Recommended Action: Approve the Cooperative Purchasing agreement with San Tan Auto Partners for the purchase of a 2023 Ford Police Interceptor Utility vehicle for \$45,216.48 and a Cooperative Purchasing Agreement with Arizona Emergency Products to upfit the vehicle for an amount not to exceed \$25,941.98, for a combined amount of \$71,158.46.

7. ADJOURNMENT

Dated this 6th day of October, 2022.

By: *Erin N. Deskins, 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 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.

Telephone: 888 788 0099 (Toll Free) or 877 853 5247 (Toll Free)
Webinar ID: 828 1952 2800

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: _____
Erin N. Deskins, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

2. a.

Meeting Date: 10/11/2022
Contact Person: Terri Denemy, Assistant to the Town Manager
 Phone: 928-636-2646 x-1301
Department: Town Manager
Estimated length of Staff Presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Presentation by Morgan O'Connor, ADEQ Community Liaison for Coconino, Mohave & Yavapai Counties, with the Voluntary Environmental Stewardship Program (VESP), Copper Level to Frank Marbury, Public Works Director. (Terri Denemy, Assistant to the Town Manager)

SITUATION & ANALYSIS:

Morgan O'Connor, ADEQ Community Liaison for Coconino, Mohave & Yavapai Counties, will recognize Public Works Chino Valley Town Complex project by presenting Frank Marbury, Public Works Director, with the Voluntary Environmental Stewardship Program (VESP), Copper Level. Copper level recognition is a one-time recognition issued annually for partnerships, collaborations or regulated facilities that have completed a project that resulted in measurable improvements to the environment. ADEQ recognizes the Chino Valley Town Complex for its outstanding partnership and collaboration.

Attachments

No file(s) attached.



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

5. a.

Meeting Date: 10/11/2022

Contact Person: Erin Deskins, Town Clerk
Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type:

AGENDA ITEM TITLE:

Consideration and possible action to approve the August 23, 2022, regular meeting minutes. (Erin N. Deskins, Town Clerk)

RECOMMENDED ACTION:

Approve the August 23, 2022, regular meeting minutes.

Attachments

Aug 23, 2022 draft minutes

DRAFT

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, AUGUST 23, 2022
6:00 P.M.**

CHINO VALLEY COUNCIL CHAMBERS 202 N. STATE ROUTE 89, CHINO VALLEY, AZ

Present: Mayor Jack Miller; Vice-Mayor Annie Perkins; Councilmember Tom Armstrong; Councilmember Eric Granillo; Councilmember Cloyce Kelly; Councilmember John McCafferty; Councilmember Lon Turner

Staff Present: Town Manager Cindy Blackmore; Town Attorney Andrew McGuire; Assistant to the Town Manager Terri Denemy; Administrative Services Director Joe Duffy; Development Services Director Laurie Lineberry; Economic Development Project Manager Maggie Tidaback; Human Resources Director Laura Kyriakakis; Assistant Town Engineer Steven Sullivan; Community Services Manager Cyndi Thomas; Senior Planner Will Dingee; Community Services Director Scott Bruner; Officer Austin McAvoy (Sgt at Arms); IT Manager Spencer Guest; Town Clerk Erin N. Deskins

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

Mayor Miller called the meeting to order at 6:00 p.m. and led the pledge of allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

- a)** Presentation of certificate to Essence Bar + Kitchen for a Chino Valley Business Humanitarian Award presented by Spencer Guest, IT Manager. (Terri Denemy, Assistant to the Town Manager)

Terri Denemy, Assistant to the Town Manager, presented the following:

- The Town would be recognizing outstanding contributions of local businesses and people on a regular basis.

The Humanitarian Business Excellence Award was being presented to owners Chef Jason Krupp and Julia Ammons of Essence Kitchen Bar and Grill.

Spencer Guest, IT Manager presented the award:

- It was the first Humanitarian Business Excellence Award.
- The staff and dining environment were nice, and they had some of the best food in the

quad city area.

- They exemplified the award they were receiving through several actions including:
 - Held complimentary lunches to honor local veterans and paired the luncheon with assistance to local kids on careers and education. Kids interested in the culinary arts helped with the veteran's lunch. They donated funds to assist local students with their college education.
 - They hosted a back-to-school meal along with Papa's Kids School Foundation, and free backpacks and school supplies had been provided.
 - He extended his personal gratitude to them for their efforts during a personal crisis, when they closed down their restaurant to allow Mr. Guest's family member attend to family needs during the crisis.
 - Their actions spoke volumes about their character. Their commitment to their staff and to the Town showed in how they used their business to benefit everyone.
- The certificate was read aloud and highlighted their exemplary commitment and actions to the community.

- b)** Presentation of special recognition to volunteers Richard Coleman and Jack Graham, who for years have been quietly maintaining the Peavine Trail, presented by Scott Bruner, Special Projects Manager. (Terri Denemy, Assistant to the Town Manager)

Scott Bruner, Special Project Manager, presented the following:

- Recognized Richard Coleman and Jack Graham for their continued volunteer service maintaining 5.3 miles of the Peavine Trail.
- Both men spent hundreds of hours maintaining the trail, from pulling weeds and shoveling, to picking up trash.
- Their services freed up Town Park's crew and saved the Town money.

Cyndi Thomas presented the following:

- Both men were presented with a certificate for their continued outstanding volunteer services in maintaining the Peavine Trail, which was read aloud for the record.

- c)** Presentation and update by the Chino Valley Area Chamber of Commerce. (Terri Denemy, Assistant to the Town Manager)

Lorette Brashear, President and CEO of the Chino Valley Chamber of Commerce presented the following:

- Major accomplishments for the past year included:
 - Finding a permanent building for the Chamber of Commerce.
 - Becoming a 501(C)(3) and they were also now the Chino Valley Area Chamber of Commerce Education Foundation.
 - Membership had increased to steady 200 numbers and their social media presence had increased by 46%.
 - The visitor center numbers for June and July included 28 walk-ins and 18 relocation packets. For the current month, they had serviced 11 walk-ins and 2 relocation packets. They were also a state certified visitor center.
 - They were doing more audio and video podcasts with local promotions for both

members and non-members, and they were establishing rate partnerships with broadcast media, including the weekly radio show, their regular radio spots with Yavapai Broadcasting, and more live remotes and working with Magic 99.9 and Sunshine Radio.

- They increased the number of mixers and grand openings. They had done one for the Peavine and would be doing one for Horses with Heart's Classy Pony Resale Boutique. Another grand opening for Sew and Sew would happen in October.
- They had begun doing quarterly morning breakfasts because members had wanted early morning networking. Lunches would remain mostly presentations.
- Upcoming:
 - As a 501(C)(3) they could apply for grants. They were currently applying for a grant for Safeway. They would apply for other grants through Arizona Department of Tourism.
 - They were doing continued education workshops.
 - They had established a partnership with the Hispanic business community through SCORE, which allowed them to do more Hispanic programs. Programs would be presented in English and Spanish.
 - Jingle Dash, their largest art show would be December 2-3 at the local high school.
 - The Harvest Festival, in conjunction with the Town and Yavapai College, would be October 15th.
 - The third annual Veterans Thanksgiving, in cooperation with Essence Kitchen, was upcoming.
 - The new Moonshine Festival in September 2023 was a take on Wine, Bites, and Brew and would be held at Earthworks.
 - Lunch and Learns would start January 2023. It was part of the Safeway Grant, which would allow free lunches for anyone that came to the Lunch and Learn programs. They would start off with Marketing and Social Media classes.
 - Women in Business were alternating between mixers and lunches, and the program was doing well.
 - Job Fair would be February 17, 2023.
 - School District Candidate forum for three candidates would be upcoming in September.
 - Small Business Saturday would be held a month early, so they could do filming at local businesses, which would launch in October.
 - Hispanic business class on how to grow your business, would be October 8th.

3) CALL TO THE PUBLIC- Individuals requesting to speak, please complete a Speaker Comment Card and return to the Clerk.

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.

Town Attorney Andrew McGuire presented the following:

- The Arizona Attorney General had reiterated the rules for public comment. The Attorney General had said that a Council as whole could not make a rule to not respond at all to call to the public because it was up to the individual member. Responses to call to the public could only be at the end after it was closed and not as a dialogue with a citizen. Responses could only include direction to staff or responses to criticism.
- **Larry Holt** – He was providing an update on the Chino Valley Memorial Foundation, including a formal invitation to the Council to attend the 9/11 Ceremony. The work done the previous year to divert water from the hill stopped the flooding. In the first quarter they had gone through \$1000 worth of flags due to the wind. They would be laying down new bricks, with a special one laid for Wade Parker. They had a partnership with Juvenile Justice and Probation, who was helping with the upkeep of the grounds.
- **Jim Milligan** – He was there to represent the Brightstar Community, that had dealt with a decade of issues with Meridian Parkway East. He had purchased his home in 2018, at which time the road was paved. They had removed deteriorating pavement on Unity Road in 2020, which had increased the traffic flow to nearly 20 vehicles per hour and increased the vehicles speed and dust. It also impacted the health and safety of the residents. Several residents took action by requesting the Town help with the situation. Watering the road to decrease dust was the Town priority, but it did not help with the traffic concerns. The Town had applied a cement slurry in the summer of 2020 for dust abatement, which worked moderately but was short lived. Now they were dealing with dust and particulates from the deteriorating slurry. Residents had submitted road maintenance forms but had received no response from the Council or Town. People that should be using Perkinsville Road, were using the dirt road. He recommended that access to Meridian Parkway East from Unity be closed and to bring traffic to Perkinsville Road until East Road 2 North was extended. It would eliminate improvements and maintenance costs to the Town.
- **Tonya Hebel** – She wondered if there was a department that addressed weeds, more than two horses per acre, travel trailers, or any place people could go to get answers. It was explained that she could contact the Town's Code Enforcement staff.

4) **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. If listed below, there may also be a presentation on information requested by the Mayor and Council and questions may be answered. No action will be taken.

a) Status reports by Mayor and Council regarding current events.

- Mayor Miller had attended the grand opening of LASER, a large animal storage facility for emergency situations.
- Councilmember Armstrong had attended the Central Yavapai Metropolitan Planning Organization Executive Board meeting. The three projects that would be submitted to the State was the completion of Jasper Hill, State Route (SR) 89 from Road 3 to Road 4 widening and improvements, and SR 89 from Road 4 to Road 5 widening, improvement, and installation of a roundabout at Road 5.

- Vice-Mayor Perkins announced that school was back in session, and she reminded people to drive safely. The next week was Homecoming week, and there would be a parade in the morning for the Seniors.

- b) Status report by Town Manager Cindy Blackmore regarding Town accomplishments, and current or upcoming projects.

Town Manager Blackmore presented the following:

- Introduced Tricia Lewis, who's firm, Arizona Partners, was on the agenda for approval of Public Information Officer.

5) **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.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to approve Consent Agenda Items 5(a, b, c, d, e, and f) as written.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- a) Consideration and possible action to approve the Professional Services Agreement with Northern AZ Partners, LLC (dba Northern Arizona Partners), to provide public information officer consulting services beginning August 23, 2022, through June 30, 2023, in an amount not to exceed \$50,000. (Laura Kyriakakis, Human Resources Director)
- b) Consideration and possible action to award a construction contract to Asphalt Paving & Supply, Inc. for the Municipal Water System Improvement Project in the amount of \$1,435,435.00. (Steven Sullivan, Assistant Engineer)
- c) Consideration and possible action to approve the Third Amendment to Town Prosecutor Contract with Lexington Law Firm through June 30, 2024, for a monthly amount of \$3,250.00. (Joe Duffy, Administrative Services Director, Town Manager)
- d) Consideration and possible action for final approval of the Arizona Public Service (APS) Franchise Agreement. (Erin N. Deskins, Town Clerk)
- e) Consideration and possible action to approve the June 28, 2022, regular and special meeting minutes. (Erin N. Deskins, Town Clerk)

- f) Consideration and possible action to approve the July 12, 2022, study session and regular meeting minutes. (Erin N. Deskins, Town Clerk)

6) 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) Public Hearing and consideration and possible action to approve Ordinance 2022-920 amending the Town of Chino Valley Unified Development Ordinance by amending certain provisions of Chapter 2 related to the meaning of words and terms, and certain provisions of Chapter 4 related to guest houses.(Laurie Lineberry, Development Services Director)

Recommended Action: (i) Hold Public Hearing (ii) Approve Ordinance No. 2022-920

Laurie Lineberry, Development Services Director, presented the following:

- The only purpose of the text amendment was to allow renting of guest houses.
- There had been confusion regarding the proposed change because people did not think they could have guest houses, but currently in the code, guest houses were allowed on properties zoned one-acre or larger.
- The proposed language was to allow legal rentals of units, with parameters that would protect the neighbors next to someone with a guesthouse.
- After questions were brought up by residents at the June Council meeting, staff took it back to the Planning Commission (P&Z) for further discussion and answers to the questions.
 - The definition for a new manufactured home was a manufactured home unit that had never been lived in, not used or occupied, and was no more than two years old from the date of manufacture.
 - P&Z determined that to make site built and manufactured homes work together, the requirement would be that a manufactured home would need to have a manufactured guest home, and a site-built home would need a site-built guest home. This would keep the architectural elements the same on a lot.
 - The guest house would need to be on a permanent foundation.
 - If a property owner had a separate guest house that would be rented, there were separate criteria that needed to be followed. One criterion was that a property owner could choose to meter the utilities to the guest house. Another requirement was that the owner needed to live on site to manage and maintain the renters.
 - CC&R's versus the Town Code question had been answered accurately by the Town Attorney. The Town enforced their codes, and the HOA enforced their CC&R's. In a conflict, the Town only enforced their codes. HOA's and CC&R's would be a civil process.
- Guest houses were currently allowed in residential zones, and the proposed language would determine if the Town should allow the rental of guest homes under certain criteria. The existing guest house code would remain in place.

Council and staff discussed the following;

- There had been citizens that spoke at the last P&Z meeting that thought the rental of guest homes would be helpful to the housing situation, but at the last Council meeting people had said the opposite.
- The guest homes would not have separate addresses, but the residents would have an A or B. Staff did not reach out to APS because they worked with them during the permitting process.
- P&Z had discussed buildings on a lot looking like they belong with each other. Building material, roof pitches and material, and buildings that looked as if they were built to be together were discussed. Through these discussions, P&Z made the determination of like buildings needed to be together.
- A guest house had a size maximum and had to be subordinate to the primary residence.
- If a primary home is rented, the guest house could not be rented. There was only one rental unit per property. It could only be used as a guest house.
- In the current code, guest houses could not be rented out. The code would add parameters that the property owner would need to meet in order to allow a rental to occur on the property. If both the primary and guest house were rented, there was no ability to protect the neighborhood. This was in addition to the rights of a property, and with rights came responsibility, such as not infringing on a neighbor with a rental unit. When staff was informed of an illegally rented guesthouse, they enforce the code.
- Septic systems would need County approval before being issued a permit.
- The code currently allowed a second structure to be built, and the new language only allowed the guest house to be rented out. The proposed code was not allowing additional units.
- Guest houses could not currently be used for vacation rentals (VRBO), but if they were allowed to rent the guest house, it could be rented out for short term, such as a VRBO.
- There was concern that two structures on one lot created an unofficial lot split. There was also concern that there was no way to regulate if the owner was living onsite full time.
- There was concern that the Town currently did not enforce rentals of the guest homes, but by adding the new language people had less personal property rights because they were restricting what could be put on the lot.
- If they did not pass the new text language, people could still have guest houses, but they just could not rent them out. The current code did not allow any type of separate meter for the guest house, but the new code would.

Public Comment:

- Cathy Middlested – A letter was filed and given to the Council to read. She opposed the item.
- Larry Holt – Opposed the item for some of the same reasons the Council had voiced during the meeting. His biggest concern was that it had the potential to double the traffic in a neighborhood if everyone built and rented a guest house. Two separate addresses meant two separate residences on one acre. If someone died, there would be no one to watch the renter, and it was difficult to evict someone. He did not care if the owner lived onsite. He had seen many who had lived onsite, and the property was still trashed.
- Tonya Hebel – She agreed with everything that had been said, and with Airbnb's it would be a problem. She thought septic would be an issue because septic sizes would need to be increased.
- Rachelle Fernow – She had attended all the meetings on the topic. She thought the Planning Department and Ms. Lineberry had put in a lot of work and answered many

questions. There had been great discussions. After the P&Z meeting, she had thought it was a great opportunity for people to make additional income and solve the housing issue. She now thought there might be a bigger problem after listening to everyone at the current meeting. She thought they needed better enforcement before approving the new language. She wondered how they could regulate the current situation before moving on to something else.

- John Hamilton – Questioned if there were any regulations on the minimum square footage of a guest home. Staff explained that the minimum was 400 square feet. He wondered if there were a limit on the number of residents that could live in a guest house. Staff explained there were regulations in the building code.

Council, Town Attorney, and staff discussed the following;

- Staff explained that there were ways to get a better handle on what was currently out there, but it was not things that the community would like. Those things included having the guest home registered, inspected annually, and a sworn affidavit filed by the owner. That would be how something would be handled that turned into a free for all.
- The Town Attorney did not know to what extent on a single-family use that the Town would have the authority to discover if there was illegal renting of a guest home. They had the code enforcement authority. They could get information on registered property from the County, but that was about as far as they could go under their current code provisions. There was nothing that would easily allow the Town to go onto a single-family home to inspect it. Code Enforcement was limited in many ways and was generally only complaint driven because of lack of resources. If there was a complaint, the Town would be limited by the Regulatory Bill of Rights about how something could be enforced. The State had clamped down on the ability of local governments to do those types of things. The issue would have to be researched before they could discuss options.
- Members thought the issue warranted further discussion before approval. Their options would be to continue the item indefinitely, which would require re-advertising and going back through the P&Z process before it could go back to the Council; the item could be continued to a specific date and would not need to be re-advertised; or there could be a motion to deny, and the issue would be done. Members discussed their options, including a study session that was clearly advertised as a public meeting, have a joint meeting with P&Z, or move the item to a specific date.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to table Ordinance No. 2022-920 indefinitely.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- b) Public hearing and consideration and possible action to approve Ordinance 2022-921, to rezone approximately 1 acre of land from Industrial (I) to Single Family Residential 1 Acre Minimum (SR-1), for property generally located on the north side of Granite Creek road, between Home Lane and Misty Lane (APN 306-17-110D). (Will Dingee, Senior Planner).

Recommended Action: (i) Hold Public Hearing (ii) Approve Ordinance 2022-921 as

presented, subject to the staff report, information provided during this hearing, and conditions found in Attachment 1.

Will Dingee, Senior Planner presented the following:

- The item was a rezone request from industrial to single family residential one acre minimum.
- The property was one acre in size and currently vacant. The property location and surrounding properties were reviewed.
- There was a similar request earlier in the year that the Council had approved.
- P&Z heard the item on July 5, 2022, and had no discussion and there were no public comments. The item was unanimously approved, and P&Z forwarded a recommendation of approval.

There were no public comments.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to approve Ordinance 2022-921 as presented, subject to the staff report, information provided during this hearing, and conditions found in Attachment 1.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- c) Consideration and possible action to approve the purchase and sale agreement for the sale of 40 acres of land (parcel number 306-02-001A) for the development of an RV park at Old Home Manor in the amount of \$1,110,000. (Maggie Tidaback, Economic Development Project Manager)

Recommended Action: Approve the purchase and sale agreement for the sale of 40 acres of land (parcel number 306-02-001A) for the development of an RV park at Old Home Manor in the amount of \$1,110,000.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to move Item 6(c) before Item 6(a)

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

Maggie Tidaback, Economic Development Project Manager, presented the following:

- The Town had been trying to get an RV Park for a very long time. They had gotten an offer for 40-acres of land at Old Home Manor (OHM) for a RV park development.
- From 1983 to 2009 the Town had purchased 880-acres for slightly over \$840,000. In 2016 and 2018, the Town had hired a consulting firm to develop a masterplan. The

masterplan had extensive development, including a golf course, but without the water capacity, it could not happen. In 2019, the Town rezoned the property to a Business Park Zoning. In 2021, the Council approved the sale of the land, and an invitation for bids went out, which closed in June of 2022.

- An overview of the site and RV Park were reviewed.
- The first request for bids went out in 2021, but the parcel changed, so the Town had to rebid it. The developer was offering \$1.11 million for 40-acres of land. They had a good track record of successfully completing projects. A \$20,000 earnest money deposit would be deposited into an escrow account, and when it closed, the remaining balance would be paid off.
- The Town had Sketch Architects put together some designs that included amenities the Town wanted to see in an RV park. The current developer was aware of the Town's expectations.
- Staff recommended approving the purchase and sale agreement for 40-acres of land for an RV Park at OHM for \$1.11 million. The Buyer would deposit the earnest money and then schedule a re-application meeting with Development Services and have a site plan review meeting. The buyer would need 180-days for their due diligence period.

Council and staff discussed the following;

- There would not be any long-term spaces.
- Staff reviewed the area of parcel 306-02-001A. The parcel was in the area of the ball fields and BMX track.
- The Town would need to enter into a Development Agreement to ensure that the RV Park was on water and sewer.

Surround properties were reviewed.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to approve Item 6(c), the purchase and sale agreement for the sale of 40 acres of for the development of an RV park at Old Home Manor in the amount of \$1,110,000.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

7) **ADJOURNMENT**

MOVED by Councilmember Lon Turner, seconded by Councilmember Cloyce Kelly to adjourn the meeting at 7:19 p.m.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, 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 _____, 2022. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this _____ day of _____, 2022.

Erin N. Deskins, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

5. b.

Meeting Date: 10/11/2022

Contact Person: Erin Deskins, Town Clerk
Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type:

AGENDA ITEM TITLE:

Consideration and possible action to approve the September 13, 2022, regular meeting minutes. (Erin N. Deskins, Town Clerk)

RECOMMENDED ACTION:

Approve the September 13, 2022, regular meeting minutes.

Attachments

09/13/2022 Draft Minutes

DRAFT

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, SEPTEMBER 13, 2022
6:00 P.M.**

**CHINO VALLEY COUNCIL CHAMBERS
202 N. STATE ROUTE 89, CHINO VALLEY, AZ**

Present: Mayor Jack Miller; Vice-Mayor Annie Perkins; Councilmember Tom Armstrong; Councilmember Eric Granillo; Councilmember Cloyce Kelly; Councilmember John McCafferty; Councilmember Lon Turner

Staff Present: Town Manager Cindy Blackmore; Town Attorney Andrew McGuire (remotely); Assistant to the Town Manager Terri Denemy; Development Services Director Laurie Lineberry (remotely); Assistant Town Engineer Steven Sullivan; Senior Planner Will Dingee; Magistrate Judge Joan Dwyer; Court Administrator Ronda Apolinar; Sergeant Cody Johnson (Sgt at Arms); Audio Visual Technician Lawrence Digges; Town Clerk Erin N. Deskins

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

Mayor Miller called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

3) CALL TO THE PUBLIC- Individuals requesting to speak, please complete a Speaker Comment Card and return to the Clerk.

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) 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. If listed below, there may also be a presentation on information requested by the Mayor and Council and questions may be answered. No action will be taken.

a) Status reports by Mayor and Council regarding current events.

- Mayor Miller commended staff for their work on Territorial Days celebration and fireworks.
- Vice Mayor Perkins reported that the 9/11 Memorial had a great turnout with visitors and community members. It was recorded by Compass Training Center. They would be doing the same thing in 2023, which also marked the ten-year anniversary of when the Memorial statue was placed.

b) Status report by Town Manager Cindy Blackmore regarding Town accomplishments, and current or upcoming projects.

Town Manager Blackmore reported the following:

- The 9/11 Memorial was a successful event that took a lot of behind-the-scenes work.
- Upcoming events: September 17 – 4th annual Hawaiian Luau that supported the Town police foundation; October 1 – Food Truck Festival; October 4 - National Night Out.

5) 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.

Vice-Mayor Perkins requested to pull items 5 (c) and (e) to be heard separately.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to approve consent agenda items 5 (a) (b) (d) (f) as written.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- a) Consideration and possible action to approve a Cooperative Purchasing Agreement with Empire Machinery for the purchase of a new Caterpillar CB2.7GC Tandem Vibratory Roller in the amount of \$61,888.23. (Frank Marbury, Public Works Director/Town Engineer)
- b) Consideration and possible action to ratify the emergency execution of a Cooperative Purchasing Agreement with Empire Power Systems for the purchase and installation of backup generators in the amount of \$106,107. (Frank Marbury, Public Works Director / Town Engineer)

- c) Consideration and possible action to approve the Development Agreement with Brown Homes for a construction trailer and sales trailer for the Perkinsville 44 Subdivision. (Will Dingee, Senior Planner)

Item 5(c) was pulled from the Consent Agenda and heard separately.
Staff, Town Attorney, Council, and Applicants discussed the following:

- The owner of the property where the trailer would be moved would be compensated for three years.
- There was concern of a conflict of interest because the property owner was on the Planning Commission (PZ). The Town Attorney explained that a conflict of interest would be if a Councilmember had a vested financial interest in the deal. PZ did not have any official decision on the agreement.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Cloyce Kelly to approve item 5 (c) as written.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- d) Consideration and possible action to approve the First Amendment to the Professional Services Agreement for Water Consulting Services between the Town of Chino Valley and Mark Holmes, LLC, to increase annual and maximum aggregate compensation. (Terri Denemy, Assistant to the Town Manager)
- e) Consideration and possible action to approve a First Amendment to the Ground Lease with Ichor Airsoft, LLC, for approximately 36.72 acres of land at Old Home Manor. (Terri Denemy, Assistant to the Town Manager)

Item 5(e) was pulled from the Consent Agenda and heard separately.
Staff, Council, and Airsoft discussed the following:

- There were concerns with the proposed revised contract that included:
 - The last Mudder Event was in 2019 and had been cancelled after that. There had been very few people that had signed up after Covid, and it seemed to be a fad. There were fourteen events across the country, and none were as popular. The Town had not been contacted to bring back the event. The Town did not want to impact the area where there was a viable business that was already in Town for an event that was uncertain.
 - The Airsoft course had been temporary so it could be removed within a week as required by the current contract, but the obstacles were important to their business. With the Mudder event no longer happening, the obstacles could be more permanent. The Mudder course was still in place. Customer feedback had mentioned more permanent amenities would bring back repeat business.
 - The Town would still keep the right to use the area six times per year with the proper notice. The current obstacles were small and prone to weather, but the larger more permanent obstacles would provide longevity and sturdiness.

- Members wanted to ensure the [motocross] track was preserved and not blocked by obstacles.
- All obstacles and structures would be built to code. The structures could still be removed if necessary.
- Airsoft was a local business with another location in Prescott Valley. If the business grew in Town, they wanted to move their headquarters to the Old Home Manor (OHM) site.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Tom Armstrong to approve 5 (e) as written.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- f) Consideration and possible action to approve the August 17, 2022, special meeting minutes. (Erin N. Deskins, Town Clerk)

6) 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 Ordinance No. 2022-922 regarding the Home Detention Program established in the Town for administration by the Presiding Magistrate pursuant to A.R.S §9-499.07. (Joan Dwyer, Presiding Magistrate)

Recommended Action: Approve Ordinance No. 2022-922 regarding the home detention program.

Joan Dwyer, Presiding Magistrate presented the following:

- There were changes in the Home Detention Program, and the Court had been in touch with the Town Attorney.
- It was recommended that the reference to Covid be removed from the Ordinance and to make home detention a permanent option. This would repeal the old Ordinance.

Council, staff, and Ms. Dwyer discussed the following:

- The program was for extreme or super extreme DUI's due to the number of days in jail. Lesser DUI's spent 10 days in jail with nine suspended. The more extreme DUI's required that 20% of the mandatory sentence be served, which equated to an extreme sentence of 30-days, with 21-days suspended. Two of those days would be in jail and the remaining days would be by ankle monitor. A super extreme DUI would require 45-days, with 31-days suspended. Three days would be in jail and the remainder served by ankle bracelet.

- The ankle monitor allowed the individual to continue to go to work.
- The ankle bracelet was tracked by SCRAM. It also tested for alcohol every 30-minutes.
- The program had been successful and other regional courts were using the same system.

In the last 12-months, there had been 20 DUI cases, with one home detention that was an extreme DUI.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Cloyce Kelly to approve Ordinance No. 2022-922 regarding the home detention program.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- b)** Consideration and possible action to approve the Amended and Restated Development Agreement for the Bright Star Property with Estrella Vista Enterprises, LLC. (Mark Holmes, Water Resources Consultant)

Recommended Action: Approve the Amended and Restated Development Agreement for the Bright Star Property with Estrella Vista Enterprises, LLC.

Mark Holmes, Water Resource Consultant presented the following:

- This was a new proposed, restated, and amended development agreement for Estrella Vista Enterprises also known as Bright Star.
- The location of the undeveloped and developed areas of the Bright Star development were reviewed. The total platted units were approximately 1200.
- A pre-annexation agreement was approved in 2001, and the first development agreement was approved in 2002. In 2018 the Town and Bright Star had discussed various aspects and obligations of the development. There had been numerous agreements and amendments over the years, making it challenging to track.
- In 2019 the Town retained Michele Van Quathem, a contracts and water rights attorney to produce a new restated agreement and clean up the many past agreements, with a focus on water and sewer. A new restated agreement was produced in 2019 and sent to Bright Star to review. It was agreed that the completed obligations would be removed from the new restated agreement but be attached as an appendix.
- In 2020, the Town and Bright Star attorneys met to review the draft agreement, and now in 2022 both parties had come to an accord on the new proposed restated agreement.
- Key agreement provisions:
 - Bright Star needed a new master plan for the development, which needed to be completed for the next new plat application.
 - New road improvements and trail connectors would be completed, including equestrian trails and Road 2 North and Center Street improvements.
 - The Town would make 45.3-acre feet of assured water supply credits available to the development per the infrastructure improvements made to the Town's water system.

- o The Town would make their physical availability determination (PAD) available to the development, so they could complete an analysis of assured water supply, which would lock up the Bright Star portion for the next ten years. Any assured water supply needed beyond the 45.3-acre feet for the development would need to follow the Town's water use ordinance.
- o Future fees, including hookup, access, development fees, etc. outside the agreement would be on the obligation of the development.
- o The Bright Star developer had signed the agreement, and the Town supported the proposed the new restated agreement and recommended it be approved.

Council and staff discussed the following:

- No water had been obligated for the subdivision with the pre-annexation or the original development agreement. With the purchase of OHM, the Town acquired a large portion of extinguished water credits, which they made available to various developers throughout the community. The 45.3-acre feet would come out of the Town's water portfolio as reclaimed water, that generated an average of over 300-acre feet annually.
- The developer spent \$1.8 million to produce a new water production well, a million-gallon storage facility for water, fire, and development needs for the entire Town's service area, and a booster station, which were all located on their development. The Town's financial responsibility was provided in water credits at \$25,000 per assured water supply credit, which was calculated at the 45.3-acre feet.
- The eastern portion of Road 2 North and the equestrian trail and east Center Street were required to be improved. Staff would research if Unity Road was part of the improvements.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Cloyce Kelly to approve the Amended and Restated Development Agreement for the Bright Star Property with Estrella Vista Enterprises, LLC.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- c) Consideration and possible action to approve an amendment to the existing Medical Marijuana Protected Development Right Site Plan, for AZ Organics LLC, located at 828 E. Road 4 South, to modify the approved site plan by changing the six (6) remaining, unbuilt buildings, into one (1) building of the same square footage. (Will Dingee, Senior Planner)

Recommended Action: Approve the amendment to the AZ Organics' existing Protected Development Right Site Plan.

Will Dingee, Senior Planner, presented the following:

- This was a requested amendment to the Protected Development Rights (PDR) for AZ Organics and their cultivation site.
- The PDR was approved in 2016, which had an approved site plan. The site plan allowed for up to 122,000 square feet for cultivation buildings onsite. To date, there had been approximately 36,000 square feet constructed, leaving 84,000 square feet mostly in the center of the development spread between four proposed buildings consisting of two sections each.
- The proposed amendment was to change the remaining sections into one building that would be incorporated into the two existing 17,000 square foot buildings. The building would need to go through the Development Services review process, including permitting and engineering.
- Since the site plan was approved by Council, it needed approval to be modified.
- Staff was recommending approval.

Council and staff discussed the following:

- The approved building square footage would not change. The over all building size would be reduced by approximately 200 square feet.
- The request was to go from four buildings to one.
- The zoning was commercial light and dated back to 2016, so the development did not have the industrial zone.
- The PDR had been renewed for the only two-year extension, and the owners had until July 2023 to wrap up the development before the PDR expired.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Cloyce Kelly to approve the amendment to the AZ Organics' existing Protected Development Right Site Plan.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

- d) Public hearing, consideration and possible action to approve the Del Sol North Minor Subdivision Final Plat consisting of 10 lots, one acre in size or larger. Approximately 1300 feet south of the intersection of East Perkinsville Road and Salida Del Sol on the northern half of parcels 306-18-038A, 038B and 038C. Applicant: Jay Bates on behalf of Right Homes. (Will Dingee, Senior Planner)

Recommended Action:

- (i.) Hold Public Hearing
- (ii.) Approve the Del Sol North Minor Subdivision Final Plat subject to the following condition:
 1. Permits for the development shall not be issued until the Maintenance Improvement District has been recorded with the County.

Items 6(d) and (e) were presented together.

Will Dingee, Senior Planner, presented the following:

- The initial submittal came in September 2021, and it had been under review since that time.
- The project location was reviewed. The property was almost 26-acres in size, was vacant, and zoned Single Family Residential one-acre minimum.
- The surrounding properties were reviewed.
- The proposal was two final plats, each ten-acres that totaled 20-one acre lots.
- Well water and septic would serve the properties. A public asphalt road would be built to Town standards, from the southern most section of the development to Perkinsville Road, which exceeded Town requirements.
- Tracts A, B, C, & D would be open space, drainage, and landscaping for the subdivision, which would transition into a Maintenance Improvement District (MID), a first for Town. These districts were similar to a homeowner's association, without the CC&R's. It was solely for the care and maintenance of the open space and drainage areas. It was assessed annual property taxes only on the people who resided in that subdivision. It acted identically to the Streetlight Improvement District at Bright Star. The initial first year maintenance cost would be funded by the developer.
- Staff was forwarding recommendations in phases:
 1. A public hearing was held for both plats.
 2. Approval for the North plat and South Plat.

Council, developer and staff discussed the following:

- The nearest sewer was 1300 feet away. There was concern that it was very close to existing sewer and the importance of getting as many subdivisions as possible onto the system for recharge and substantial water purposes. There was also concern about seepage into the water system. In this case, it would require going through private property to supply sewer to the subdivision.
- Staff had looked at all options for connecting to Town sewer, but the costs were too great. As the Town moved forward in the masterplan process, these types of issues would be considered.
- The developer was unsure of the first-year cost of the MID, but it would include landscaping, plants, and fencing. It would go on the homeowner's tax bill after the first year.

Public Comments:

- Rachelle Fernow – was concerned about the number of wells that would be going into the development and shared concerns about the Town's water and sewer infrastructure. She did not understand how it was the City of Prescott's water district. Redoing the General Plan would not give the Town more money to solve these issues. It seemed a common issue to approve developments when water was a real issue. It was explained that the City of Prescott supplied Chino Meadows with water, and it was their water lines in the area. It was not a reality to get Prescott to supply the new lots with water. It was not fair to hold up a private development, but it was an issue that would need to be considered in the future. Ms. Fernow questioned why they could not run the Town's waterline along Perkinsville to the development. It was explained that it was a funding problem.
- Jay Bates, Right Homes – The developer was required to do an assured water supply through the State. They looked at all the aspects of how the wells impacted water supply. They had received assured water supply through ADWR, who looked at the 100-year mark and equated it to the 20-wells operated on those lots. It had already

been issued.

- Teena Meadors – questioned why sewer and water could not be accessed through the developer’s property that had direct access to Road 2 North and was downhill. It would not require an easement since the developer owned the property.

Council Discussion:

- There was concern about the recharge issue more than the source of water and the need for the Town to emphasize the importance of recharging water. Water collection would be essential for sustainability.
- The MID was developed in two stages, with the initial petition signing and then the plats would be recorded. Once recorded, the lots would be assigned parcel numbers, which was how taxes were assessed. Staff wanted to ensure that the maps were recorded, parcel numbers issued and reflected on the final draft of the MID agreement, and then recorded. Permits could then be issued. The attorney reviewed the process of creating the MID.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Cloyce Kelly to approve Item 6(d) to approve the Del Sol North Minor Subdivision Final Plat subject to the following condition:

1. Permits for the development shall not be issued until the Maintenance Improvement District has been recorded with the County.

CM Armstrong abstained because of the taxes that would be charged and the water issue.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

6 - 0 PASSED

- e) Consideration and possible action to approve the Del Sol South Minor Subdivision Final Plat consisting of 10 lots one acre in size or larger. Located approximately 1300 feet south of the intersection of East Perkinsville Road and Salida Del Sol on the southern half of parcels 306-18-038A, 038B and 038C. (Will Dingee, Senior Planner)

Recommended Action:

- (i.) Hold Public Hearing
- (ii.) Approve the Del Sol South Minor Subdivision Final Plat subject to the following condition:
 1. Permits for the development shall not be issued until the Maintenance Improvement District has been recorded with the County.

MOVED by Vice-Mayor Annie Perkins, seconded by Councilmember Lon Turner to approve Del Sol South Minor Subdivision Final Plat subject to the following condition:

1. Permits for the development shall not be issued until the Maintenance Improvement District has been recorded with the County.

CM Armstrong abstained because of the taxes that would be charged and the water issue.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Eric Granillo,
Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember
Lon Turner

6 - 0 PASSED

7) ADJOURNMENT

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, 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 _____, 2022. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this _____ day of _____, 2022.

Erin N. Deskins, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

6. a.

Meeting Date: 10/11/2022
Contact Person: Will Dingee, Senior Planner
 Phone: 928-636-4427 x-1233
Department: Development Services
Estimated length of staff presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Public hearing, consideration, and possible action to approve Ordinance No. 2022-923 amending the Town of Chino Valley Unified Development Ordinance relating to definitions, general regulations, and subdivision regulations to ensure internal consistency with recent amendments to Town Code Chapters 50 and 51. (Will Dingee, Senior Planner)

RECOMMENDED ACTION:

- i. Hold Public Hearing
- ii. Approve Ordinance No. 2022-923 as reflected in the October 2022 Amendments to Chino Valley Town Code Chapter 154: Unified Development Ordinance, subject to the staff report and information provided during this hearing.

SITUATION AND ANALYSIS:

The Unified Development Ordinance (UDO) states that it “may be amended, supplemented, changed, modified or repealed when deemed necessary to best serve the public interest, health, comfort, convenience, safety and general welfare of the citizens of the Town.” This current text amendment request from staff, through direction of Town Council, is deemed necessary to best serve the public interest. The proposal is to modify Chapters 2, 4 and 5 of the UDO as it pertains to recent text amendments to the Water and Sewer Utility Code. The primary purposes of the modifications are:

- Reconciling the UDO and Town Code provisions with respect to water and sewer utilities in conjunction with minimum lot sizes
- Administrative changes to add subdivision definitions, refine the Final Plat subdivision process and adjust plat time limits.

Earlier this year, the Town Council adopted an ordinance to amend the Town Code, Chapters 50 and 51, which govern water and sewer utilities within the Town of Chino Valley. The proposed amendment is intended to bring the UDO into conformance with these recent changes made by Town Council. In addition to this, the text amendment brings forward a handful of administrative changes that have been discussed with both Town Council and the Planning Commission.

This item went before the Planning and Zoning Commission on September 6th. The only question from the Commission to Staff was regarding the existing code exempting utility connections for lot splits until 2025. Staff explained to the Commission that this code was adopted by Council back in 2020 when Council adopted the new subdivision code.

There were no questions from the public.

The Commission forwarded a recommendation of approval to the Town Council with a 7-0 Vote

A copy of the Proposed Text Amendment Language can be found in Attachment A and a copy of the Planning and Zoning Staff Report can be found in Attachment B.

Fiscal Impact

Fiscal Impact?: N/A

If Yes, Budget Code:

Available:

Funding Source:

Attachments

Attachment B - Planning and Zoning Staff Report

October 2022 Amendments to Chino Valley Town Code Chapter 154: Unified Development Ordinance

ORD - 2022-923 - Ch. 154 - Conforming UDO to Recent 50-51 Updates

ATTACHMENT B
PLANNING AND ZONING STAFF REPORT



TOWN OF CHINO VALLEY
Planning Commission Staff Report
September 6, 2022
File Number T-2022-05
Text Amendment

PROJECT DESCRIPTION: Request to amend the Town of Chino Valley Unified Development Ordinance, Section 2.1 Definitions, Section 4.5 Yard, Lot and Area Requirements, Section 4.23 Public Street System and Public Access System; and various parts of Section 5 Subdivision Regulations, to ensure internal consistency with recently amended Title V Public Works Chapters 50 and 51 of the Town Code

STAFF ANALYSIS:

The Unified Development Ordinance (UDO) states that it “may be amended, supplemented, changed, modified or repealed when deemed necessary to best serve the public interest, health, comfort, convenience, safety and general welfare of the citizens of the Town.” This current text amendment request from staff, through direction of Town Council, is deemed necessary to best serve the public interest. The proposal is to modify Chapters 2, 4 and 5 of the UDO as it pertains recent text amendments to the Water and Sewer Utility Code. The primary purposes of the modifications are:

- Reconciling the UDO and Town Code provisions with respect to water and sewer utilities in conjunction with minimum lot sizes
- Administrative changes to add subdivision definitions, refine the Final Plat subdivision process and adjust plat time limits.

Earlier this year, the Town Council adopted an ordinance to amend the Town Code, Chapters 50 and 51, which govern water and sewer utilities within the Town of Chino Valley. The proposed amendment before the Planning and Zoning Commission is intended to bring the UDO into conformance with these recent changes made by Town Council. In addition to this, the text amendment brings forward a handful of administrative changes that have been discussed with both Town Council and the Planning Commission.

The proposed text amendment is reflected in Attachments A

Staff Recommendation:

Staff recommends **APPROVAL** of the text amendment amend the Town of Chino Valley Unified Development Ordinance, Section 2.1 Definitions, Section 4.5 Yard, Lot and Area Requirements, Section 4.23 Public Street System and Public Access System; and various parts of Section 5 Subdivision Regulations, to ensure internal consistency with recently amended Title V Public Works Chapters 50 and 51 of the Town Code; providing for repeal of conflicting ordinances; and providing for severability.

SUGGESTED COMMISSION**MOTION:**

Move to **APPROVE** Text Amendment T-2022-05 as reflected in Attachment A, subject to the staff report and information provided during this hearing.

Effect of the Approval:

By approving the Text Amendment, the Planning and Zoning Commission is recommending that the Town Council approve the text amendment to amend Chapters 2, 4 & 4 of the UDO to ensure internal consistency with recently amended Title V Public Works Chapters 50 and 51 of the Town Code

Attachments

A
Text Amendment Language

Prepared By:**Date:** August 29, 2022

Will Dingee
 Senior Planner
wdingee@chinoaz.net
 (928)636-4427, x1233

Approved By:**Date:** August 29, 2022

Laurie Lineberry, AICP
 Development Services Director
llineberry@chinoaz.net
 (928)636-4427, x1217

**OCTOBER 2022 AMENDMENTS TO CHINO VALLEY TOWN CODE CHAPTER 154:
UNIFIED DEVELOPMENT ORDINANCE**

Section 1. Chino Valley Town Code, Title XV (Land Usage), Chapter 154 (Unified Development Ordinance), Section 2 (Definitions), is hereby amended as follows (with deletions in ~~strike through~~ and additions in **bold**):

2 DEFINITIONS

2.1 ~~MEANING OF WORDS AND TERMS~~ **RULES OF CONSTRUCTION**

For this Ordinance, certain terms and words are herein defined.

Present tense shall include future tense; singular number shall include plural, and plural shall include singular; "shall" is mandatory and "may" is permissive; "persons" include individuals, partnerships, corporations, clubs or associations; reference to one gender shall include the other.

The following terms may be used interchangeably; ~~lot, parcel, plot, or premises;~~ used, arranged, occupied or maintained; building or structure; sold or dispensed; zone or district.

~~"Town" shall mean the Town of Chino Valley including the departments and employees of the Town authorized to enforce the regulations set forth in this Ordinance; "Board" shall mean the Board of Adjustment;~~

~~"Commission" shall mean the Planning and Zoning Commission; "Council" shall mean the Town Council; Committee shall mean the Site Plan Review Committee.~~

Defined words appear in bold throughout the text.

2.2 MEANING OF WORDS AND TERMS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

* * *

~~ANIMAL HOSPITAL shall mean a.~~ **A** place where animals are given medical or surgical treatment and are cared for during the time of such treatment. Use of the facility for boarding shall be a permitted accessory use and limited to indoor care only. Animal hospital shall mean the same as veterinary clinic.

* * *

~~ARTERIAL STREET. Means a~~ **A** street with the principal function to serve as a part of a major network for the through traffic flow separate from local

traffic, to and from areas of principal traffic generation, of adequate design, capacity and construction to provide for the safe and rapid distribution and collection of through traffic and to provide limited ingress and egress to and from collector and local streets. (See Section 4.28 for a list of arterial streets.)

* * *

BOARD OR BOARD OF ADJUSTMENT. The Town's Board of Adjustment.

* * *

COLLECTOR STREET.~~Means a~~ **A** street, which carries traffic from local streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development. (See Section 4.28 for a list of collector streets.)

* * *

COMMISSION or PLANNING AND ZONING COMMISSION. ~~means the~~
The Town's Planning and Zoning Commission ~~of the Town.~~

COMMITTEE. The Town's Site Plan Review Committee.

* * *

DEAD END STREET.~~Means a.~~ **A** street having a traffic outlet on one end only.

* * *

DOUBLE FRONTAGE LOT.~~Means a.~~ **A** lot having street frontage on both the front and rear property lines.

* * *

INTERSECTION.~~Means the~~ **The** point of crossing or meeting of two (2) or more streets.

* * *

LOCAL STREET.~~Means a~~ **A** street, with or without parking facilities used primarily for direct access to and from residential, commercial and industrial areas having major service functions of loading and unloading, and direct access to and from abutting property, controlled in such manner as to discourage through traffic and to maintain relatively slow speed.

LOT. A piece or parcel of land legally created, whether by subdivision plat, land split, or otherwise, ~~as permitted by law to be used or occupied in conformance with this Ordinance by one or more structures or uses, including therewith, open spaces, access, area, shape and frontage as required by this Code.~~

* * *

ORDINANCE. ~~Means the~~ **The Town's Unified Developemnt** Ordinance, unless the context or commonly understood usage implies otherwise, and shall include "the Ordinance," ~~or "this Ordinance" or "UDO."~~

* * *

PARCEL. **Any legally described piece of land designated by the owner or developer as land to be used or developed as a unit.**

* * *

PLAT ~~Means a~~. **A** map of a subdivision and associated required information which provides for changes in land use or ownership or which describes existing uses.

* * *

PRIVATE STREETS ~~Means a~~. **A** street within a subdivision that has not been dedicated for public use and is reserved for the use of lot owners within the subdivision and their guests and invitees.

* * *

PROPERTY LINE(S) ~~Means those~~. **Those** lines defining the boundaries of lots.

* * *

PUBLIC NUISANCE ~~Means anything~~. **Anything** offensive or obnoxious to the health and welfare of the inhabitants of the Town; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community.

* * *

QUID PRO QUO. ~~Something given or received for something else; also: a deal arranging a quid pro quo.~~ **PRONUNCIATION:** \,KWID-,PR-'KWA

* * *

RIGHT-OF-WAY ~~Means any.~~ **Any** public or private right-of-way including any area required for public use pursuant to any general or specific plan enacted by the Council pursuant to Title 9, Chapter 4, Article 6, Arizona Revised Statutes.

* * *

STREET. Any existing or proposed parkway, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access or ~~a street shown in areas identified on a plat, whether public or private,~~ heretofore approved pursuant to law or ~~a street in a plat~~ duly filed and recorded in the Yavapai County Recorder's office, **that provides legal vehicular, pedestrian and bicycle access to every lot in the subdivision.** A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, ~~and bridges and viaducts.~~ **and bridges**

* * *

STUB STREET ~~Means a.~~ **A** short dead end street no more than one lot deep in length formed at the boundaries of a subdivision to provide access to abutting property.

* * *

SUBDIVISION. Improved or unimproved land or lands divided for the purpose of financing, sale, or lease, whether immediate or future, into four or more lots, tracts, or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts, or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. "Subdivision" also includes any condominium, cooperative, community apartment, Townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

SUBDIVISION, MAJOR ~~Means improved.~~ **Improved** or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into more than ten (10) lots, tracts, or parcels of land, or, if a new street is involved, any such property which is divided into two

(2) or more lots, tracts or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, Townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

SUBDIVISION, MINOR ~~Means improved.~~ **Improved** or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into between four (4) and ten (10) lots, tracts, or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

* * *

TOWN. The Town of Chino Valley, Arizona, including the departments and employees of the Town authorized to enforce the regulations set forth in this Ordinance.

TOWN ENGINEER ~~Means the.~~ **The** individual hired ~~designed~~ by the Town Manager, pursuant to the provisions of A.R.S. § 9-238, to serve as Town Engineer.

TRADITIONAL DEVELOPMENT. ~~“Traditional Development” shall mean a~~ **A** residential development approach where lots are relatively uniform in size and dispersed consistently throughout the development and streets are generally laid out in a standard grid pattern.

TRACT. A unit of land within a subdivision not intended or designed to ever be used as a buildable lot, designated and reserved on a plat for the following ancillary uses: wells, drainage, retention, open space and utilities, all of which are deemed common areas in the subdivision.

* * *

UNIFIED DEVELOPMENT ORDINANCE ~~Means that.~~ **That** Ordinance enacted by the Council regulating the use of land or structures or both.

* * *

Section 2. The following provisions in Chino Valley Town Code, Title XV (Land Usage), Chapter 154 (Unified Development Ordinance), Section 4 (General Regulations), are hereby amended as follows (with deletions shown in ~~strike through~~ and additions in **bold**):

4 GENERAL REGULATIONS

* * *

4.5 YARD, LOT AND AREA REQUIREMENTS

* * *

10. Notwithstanding other provisions of this code to the contrary, ~~flag shaped~~ **flag-shaped** or panhandle lots ("flag lots") ~~as depicted in the diagram below~~ may be created by land split in any zone, **with the exception of zones with a minimum required acreage of less than one (1) acre in size**, if all of the following requirements are met:

- a. The lot has at least fifty (50) feet of frontage on a dedicated public street, ~~or a private street established in a final plat;~~ **and**
- b. The entire flagpole/panhandle portion of the lot shall be at least fifty (50) feet in width; **and**
- c. There shall be a minimum separation between the edges of flagpoles/panhandles that equals or exceeds the minimum lot width for the respective zone in which the property is located; ~~;~~ **and**
- d. The length of the flagpole or panhandle shall not exceed three hundred thirty (330) feet as measured from the right-of-way line or street chord upon which the flagpole/panhandle fronts on a public street or final platted private street ~~or public way~~ to the front line of the body of the lot; and
- e. The flagpole or panhandle portion of a flag lot shall be included in calculating gross square footage of a lot where the flagpole/panhandle is contiguous to the lot in question and is owned by the owner of the lot in question or was owned by the owner of the lot in question at the time the flagpole/panhandle or portion thereof was accepted for ownership by the Town pursuant to a dedication made by the owner in order to create, using all or part of the flagpole/panhandle and, if applicable, other property, a public street; ~~;~~ **and**

- f. Existing lots ~~which~~**that** would otherwise meet the definition of a flag lot but for the width or length of the flagpole/panhandle used as access to the lot shall be considered non-conforming flag lots.

* * *

4.23 PUBLIC STREET SYSTEM AND PUBLIC USE ACCESS SYSTEM

* * *

E. Right of way Dedication

* * *

5. ~~In no case shall right of way or public street of the public use access system, as required by this UDO, be considered as creating non-conforming lots or prevent such lots from legally being split as otherwise governed in this UDO due to loss of area as a result of such requirements~~**For lots with a zoning classification of one (1) acre or greater, dedications of right-of-way or public streets of the public use access system, as required by this UDO, shall not be considered to create non-conforming lots or prevent such lots from legally being split as otherwise governed in the UDO due to loss of area as a result of such dedication.**

Section 3. The following provisions in Chino Valley Town Code, Title XV (Land Usage), Chapter 154 (Unified Development Ordinance), Section 5 (Subdivision Regulations), are hereby amended as follows (with deletions shown in ~~strike through~~ and additions in **bold**):

5 SUBDIVISION REGULATIONS

* * *

5.1 INTENT

* * *

5.1.7 SUBDIVISION APPLICABILITY

* * *

- C. Within a subdivision, tracts of land are designated with letters, lots are designated with numbers and streets or roads are named.**

5.2 SUBDIVISION APPLICATION PROCEDURES

* * *

5.2.3 PRELIMINARY PLAT

* * *

C. Preliminary plat Review and Approval

* * *

6. Each approved preliminary plat shall expire if a final plat for that property has not been submitted within ~~one (1) year~~ **three (3) years** of the preliminary plat approval. ~~Extensions of one (1) year may be granted by the Zoning Administrator or his/her designee upon written request by the applicant/subdivider.~~

* * *

5.2.4 FINAL PLAT

* * *

B. Final plat Submission: A complete Final Plat application submittal shall include the following:

* * *

14. Final Plat Review **and Approval**

a. Complete Application: Upon acceptance of an application for approval of a final plat, the Zoning Administrator or his/her designee will have five (5) working days to advise the applicant if the submittal is complete. Copies of complete applications will be sent to the Town departments and utility and public safety agencies that serve the area. No application shall be deemed complete unless it includes all of the required items set forth above.

b. ~~Council Consideration: Council shall consider the proposed final plat after the Zoning Administrator and the Public Works Director approve all civil drawings and deem technical review to be complete.~~ **The Commission shall consider the final plat at a properly posted and advertised public meeting. The Commission shall provide a recommendation to the Council to approve the final plat as submitted, to approve final plat with conditions, or to deny the final plat.**

c. ~~Recordation: Upon receipt of the required assurances, and proof of adequate water supply, the Zoning Administrator or his/her designee will have the final plat recorded and provide a recorded copy of the plat to the applicant. After the Planning and Zoning Commission has forwarded its recommendation to the Council, the Council shall consider the proposed final plat at a properly posted and advertised public meeting. The Council may approve the final plat as submitted, approve the final plat with conditions as recommended by the Commission, approve the final plat with additional or modified conditions, or deny the final plat.~~

d. **Recordation: Upon receipt of the required assurances, and proof of adequate water supply, the Zoning Administrator or his/her designee will have the final plat recorded and provide a recorded copy of the plat to the applicant.**

e. **Each approved final plat shall expire if not recorded within one (1) year of receiving approval from the Town Council.**

* * *

5.2.6 Land Splits and other divisions of land not requiring a subdivision

Land splits or divisions of land not meeting the definition of land split or subdivision do not require the submission and approval of preliminary and/or final plats. Such divisions do not include or allow for a land split or further division of previously-subdivided land. **Land Splits with a resulting lot size of less than one (1) acre in size do not qualify for land splits and are required to go through the subdivision process.** All divisions of land are subject to the following:

* * *

5.2.7 Minor Subdivision

The minor subdivision process provides relief from certain administrative requirements related to subdivisions of ten (10) or fewer lots **with a resulting lot size of greater than or equal to one (1) acre in size.** In order to utilize the minor subdivision process, the subdivider shall provide, as part of its application, certification that the land sought to be subdivided consists of ten (10) or fewer lots and that such subdivision is situated such that future extensions of streets therein cannot facilitate a subdivision of more than ten (10) lots. **The minor subdivision process cannot be used for lots with a zoning classification of less than one (1) acre in size.** Subdivisions meeting the requirements of a minor subdivision shall meet all of the requirements of these Subdivision Regulations except as follows:

* * *

5.3 DESIGN PRINCIPLES AND DEVELOPMENT STANDARDS

* * *

5.3.3 Water Facilities Design

~~A. Subdivision water system and facilities will substantially conform to the precepts of the Chino Valley Comprehensive Water Master Plan and other water company master plans.~~

~~B. Each lot or building unit shall be supplied with potable water in sufficient volume and pressure for domestic use and fire purposes. Design and construction of any and all facilities relating to transmission and distribution of potable water within and outside of any subdivision must meet with the written approval of the Public Works Director.~~

~~C. Water mains shall be looped or installed in a circulatory configuration whenever possible. Branching or dead-end patterns may be accepted by the Public Works Director if no looping alternative is possible.~~

~~D. All lots created pursuant to these Subdivision Regulations that are served by the Town's water system shall connect to such system in the manner described in this Section 5.3.3. A lot is considered to be served by the Town's water system if a Town water line is within three hundred (300) feet of the property line of the parent parcel from which the lot to be served was divided; provided, however, that until September 1, 2025, any lot that is created in conformance with the requirements for (1) land splits not requiring a subdivision in Section 5.2.6, or (2) a combination of the minor subdivision and rural subdivision provisions in Sections 5.2.7 and 5.2.8 of these Subdivision Regulations, may be developed without connecting to the Town's water system, even if the lot is served at the time of building permit application.~~

See Town Code Title V for all other regulations.

5.3.4 Sewer Facilities Design

~~A. Wastewater disposal facilities shall be installed to serve each lot and be subject to the following standards and approvals:~~

~~1. Individual systems, including septic tanks, shall be discouraged, but may be constructed in areas not presently served. Property is considered served if a public sewer is within three hundred (300) feet of the property line of the parent parcel from which the lot to be served was divided;~~

~~provided, however, that until~~ **Until** September 1, 2025, any lot that is created in conformance with the requirements for (1) land splits not requiring a subdivision in Section 5.2.6, or (2) a combination of the minor subdivision and rural subdivision provisions in Sections 5.2.7 and 5.2.8 of these Subdivision Regulations, and which otherwise meets the requirements of these Subdivision Regulations and any applicable law, regulation or ordinance, may be developed without connecting to the Town's sewer system, even if the lot is served at the time of building permit application.

~~2. Public sanitary sewers shall be installed in areas served by an existing public sewer system, and shall be installed in all areas where the lot sizes are one-half (½) acre or less, regardless of whether the area is currently served. A gravity sewer system is the preferred method of collecting and conveying wastewater. However, low pressure sewer systems may be installed if a homeowners' association is established during the platting process to oversee operation and maintenance of the individual grinder pump stations. If low pressure sewer systems are utilized within a subdivision, a hybrid of gravity and low pressure sewer should be contemplated with line lengths for low pressure sewer system kept to minimum lengths in an attempt to minimize odors.~~

~~B. Public sanitary sewers shall be designed for location within the street rights of way unless topography or unusually excessive cost dictates the installation of sewers in public utility easements extending through the rear or side yards of lots.~~

~~C. Design and construction of any and all facilities relating to the collection and conveyance of wastewater within and outside any subdivision is the responsibility of the developer of the subdivision and must meet with the written approval of the Public Works Director.~~

See Town Code Title V for all other regulations.

ORDINANCE NO. 2022-923

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, DECLARING THE DOCUMENT ENTITLED “OCTOBER 2022 AMENDMENTS TO CHINO VALLEY TOWN CODE CHAPTER 154: UNIFIED DEVELOPMENT ORDINANCE” AS A PUBLIC RECORD; ADOPTING THE SAME BY REFERENCE; AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF CHINO VALLEY IN ACCORDANCE WITH THE “TOWN OF CHINO VALLEY OCTOBER 2022 AMENDMENTS TO CHAPTER 154: UNIFIED DEVELOPMENT ORDINANCE”; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, on February 22, 2022, the Mayor and Common Council of the Town of Chino Valley (the “Town Council”) adopted amendments to the Chino Valley Town Code relating to standards and requirements for property maintenance and water and sewer connections, and public nuisance abatement (the “February 2022 Town Code Amendments”); and

WHEREAS, the Town Council desires to amend the Chino Valley Town Code, Title XV (Land Usage), Chapter 154 (Unified Development Ordinance) (the “UDO”), by adopting by reference the “October 2022 Amendments to Chino Valley Town Code Chapter 154: Unified Development Ordinance” (the “October 2022 UDO Amendments”), to bring the UDO into conformance with the February 2022 Town Code Amendments; and

WHEREAS, the Town Council has determined that the October 2022 UDO Amendments are not in conflict with the Town of Chino Valley General Plan and any applicable specific area plan, neighborhood plan, or any other plan; and

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Constitution of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance; and

WHEREAS, the Town Council has considered the probable impact of this ordinance on the cost to construct housing for sale or rent.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Chino Valley, Arizona, as follows:

Section 1. The above recitals are hereby incorporated as if fully set forth herein.

Section 2. That certain document entitled “October 2022 Amendments to Chino Valley Town Code Chapter 154: Unified Development Ordinance,” of which one paper copy and one electronic copy are maintained, in compliance with ARIZ. REV. STAT. § 44-7041, on file in the office of the Town Clerk as required by ARIZ. REV. STAT. § 9-802, and available for public use and inspection during normal business hours, is hereby declared

to be a public record and said copies are hereby ordered to remain on file with the Town Clerk.

Section 3. The Chino Valley Town Code is hereby amended by amending Chapter 154 (Unified Development Ordinance) as set forth in the October 2022 UDO Amendments, which document is hereby adopted by reference and incorporated herein by reference as if fully set forth in this Ordinance.

Section 4. Any violation of the UDO shall be charged, filed, and prosecuted as a civil infraction as set forth in Section 1.10.2 of the UDO. Any person who violates the UDO after previously having been found responsible for committing two or more civil infractions of the UDO within any 36-month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a criminal misdemeanor punishable as set forth in Section 1.10.3 of the UDO. The Town Prosecutor is authorized to file a criminal misdemeanor complaint in the Chino Valley Municipal Court against such habitual offenders who violate the UDO. For purposes of calculating the 36-month period under this paragraph, the dates of the Commission of the offenses are the determining factor.

Section 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the October 2022 UDO Amendments adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 6. The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

(SIGNATURES ON THE FOLLOWING PAGE)

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 11th day of October, 2022.

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

I hereby certify that the foregoing Ordinance No. 2022-923 was duly passed by the Council of the Town of Chino Valley, Arizona, at a meeting held on October 11, 2022, and that quorum was present, and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

Erin N. Deskins, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

6. b.

Meeting Date: 10/11/2022
Contact Person: Frank Marbury, Public Works Director/Town Engineer
 Phone: 928-636-7140 x-1226
Department: Public Works
Estimated length of staff presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to approve a Cooperative Purchasing Agreement with San Tan Auto Partners for the purchase of a 2023 Ford Police Interceptor Utility vehicle for \$45,216.48 and a Cooperative Purchasing Agreement with Arizona Emergency Products to upfit the vehicle for an amount not to exceed \$25,941.98, for a combined amount of \$71,158.46. (Frank Marbury, Public Works Director/Town Engineer)

RECOMMENDED ACTION:

Approve the Cooperative Purchasing agreement with San Tan Auto Partners for the purchase of a 2023 Ford Police Interceptor Utility vehicle for \$45,216.48 and a Cooperative Purchasing Agreement with Arizona Emergency Products to upfit the vehicle for an amount not to exceed \$25,941.98, for a combined amount of \$71,158.46.

SITUATION AND ANALYSIS:

A police Interceptor unit (No. 42) was damaged beyond repair in an accident and needed replacement. Staff is requesting the use of contingency funds to replace the vehicle. The total cost of vehicle and upfitting is \$71,158.46. Insurance is reimbursing the Town \$30,916.65. Staff recommends approval of the use of \$40,241.81 to come from contingency funds.

Fiscal Impact

Fiscal Impact?: Yes
If Yes, Budget Code: 01-95-5600
Available: \$40,241.81
Funding Source:

Attachments

PBA - San Tan Ford - 2023 Ford Police Interceptor Utility Vehicle
 PBA - Arizona Emergency Products - 2023 Police Vehicle Upfitting

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
SAN TAN AUTO PARTNERS, LLC,
D/B/A SAN TAN FORD**

THIS COOPERATIVE PURCHASING AGREEMENT (this “Agreement”) is entered into as of October 11, 2022, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and San Tan Auto Partners, LLC., an Arizona limited liability company doing business as San Tan Ford (the “Vendor”).

RECITALS

A. After a competitive procurement process, the State of Arizona (the “State”) entered into Contract No. CTR059323, dated March 17, 2022 (the “State Contract”), with the Vendor for the purchase of new vehicles. A copy of the State 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 vehicles under the State Contract, at its discretion and with the agreement of the awarded Vendor.

C. The Town and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the State Contract and this Agreement, (ii) establishing the terms and conditions by which the Vendor may provide the Town with one 2023 Ford Police Interceptor Utility Vehicle, as more particularly set forth in Section 2 below (the “Vehicle”), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Vehicle.

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 Vendor 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 June 30, 2022, unless terminated as otherwise provided in this Agreement or the State Contract.

2. Scope of Work. Vendor shall provide the Vehicle to the Town under the terms and conditions of the State Contract and in the configuration set forth in the Quote attached hereto as Exhibit B and incorporated herein by reference.

3. Inspection; Acceptance. The Vehicle is subject to final inspection and acceptance by the Town. A Vehicle failing to conform to the requirements of this Agreement and/or the State Contract will be held at the Vendor’s risk and may be returned to the Vendor. If so returned, all

costs are the responsibility of the Vendor. Upon discovery of a non-conforming Vehicle, the Town may elect to do either of the following by written notice to the Vendor: (i) waive the non-conformance or (ii) bring the Vehicle into compliance and withhold the cost of same from any payments due to the Vendor.

4. Compensation. The Town shall pay Vendor an amount not to exceed \$45,216.48 for the Vehicle at the unit rate set forth in the State Contract and as more particularly set forth in the Quote.

5. Payments. The Town shall pay the Vendor upon delivery and acceptance of the Vehicle and upon submission and approval of the invoice. The invoice shall (i) contain a reference to this Agreement and the State Contract and (ii) document the Vehicle delivered and accepted to date. Additionally, an invoice submitted without referencing this Agreement and the State Contract will be subject to rejection and may be returned.

6. Records and Audit Rights. To ensure that the Vendor and its subcontractors are complying with the warranty under Section 7 below, Vendor'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 Vendor 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 Vendor'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, Vendor 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 Vendor pursuant to this Agreement. Vendor 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 Vendor or its subcontractors reasonable advance notice of intended audits. Vendor 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 Vendor 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). Vendor'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. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a "boycott" of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

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 Yavapai 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 Vendor 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. Vendor 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, including any amendments, the State Contract, the Quote 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 State 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 State Contract shall not alter such terms and conditions or relieve Vendor 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 State Contract, the Town shall be afforded all of the rights and privileges afforded to the State and shall be the "State" (as defined in the State Contract) for the purposes of the portions of the State 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 the State to the extent provided under the State 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 Vendor'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 (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 Vendor:	San Tan Auto Partners, LLC, dba San Tan Ford 1429 East Motorplex Loop Gilbert, Arizona 85297 Attn: Joe Sanchez

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

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

SAN TAN AUTO PARTNERS, LLC,
an Arizona limited liability company d/b/a
SAN TAN FORD

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
SAN TAN AUTO PARTNERS, LLC,
D/B/A SAN TAN FORD

[State Contract]

See following pages.



OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

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

San Tan Auto Partners DBA San Tan Ford
 Offeror (Company) Name
 1429 E Motorplex Loop
 Address
 Gilbert AZ 85297
 City State Zip
 joesanchez@santanford.com
 Email Address
 fleetsales@santanford.com
 Company Email Address


 Signature of Person Authorized to Sign Offer
 Joe Sanchez 1/18/2022
 Printed Name Date
 Government Fleet Account Manager
 Title
 480-621-3741
 Phone Number
 480-621-3796
 Fax Number

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

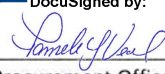
ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059323 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

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

State of Arizona

Effective this 17th day of March 2022

DocuSigned by:

 Procurement Officer 3/10/2022
 Awarded Date



STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

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

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

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

"An Equal Opportunity Agency"

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

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

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

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SCOPE OF WORK

1. Statement of Need

- 1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

- 3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.
- 3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.
- 3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.
- 3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.



SCOPE OF WORK

- 3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.
- 3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.
- 3.9 The following documents shall be provided upon delivery of the vehicle(s):
 - 3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
 - 3.9.2 Warranty Document
 - 3.9.3 Manufacturers unaltered invoice
 - 3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
 - 3.9.5 Level 1 Inspection if applicable, completed before delivery
- 3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

- 4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.
- 4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the manufacturer's increase or decrease. Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.
- 4.3 The following fuel types are allowable under this contract are to include but are not limited too.
 - 4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
 - 4.3.2 Diesel

SCOPE OF WORK

4.3.3 Gasoline

4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved

4.3.5 Hybrid-Electric Vehicles (HEV)

4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)

4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)

4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment

4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request]

4.5.3 Bluetooth capabilities

4.5.4 AM/FM radio

4.5.5 Cruise Control

4.5.6 Power Door Locks/Power Windows

4.5.7 Power Mirrors when available

4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.

a. Type of keys to be provided shall be indicated on quote.

4.5.9 Air conditioning

a. Rear air conditioning on all vehicles, when available

4.5.10 Cloth seats

4.5.11 Rear view mirrors including on driver and passenger doors

a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.

b. Back up Camera

4.5.12 Spare tire

a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.

b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.

4.5.13 Floor Mats

SCOPE OF WORK

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

SPECIAL TERMS AND CONDITIONS

1. CONTRACT TERM

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

2. CONTRACT EXTENSION

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

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

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

5. ORDERING PROCESS

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

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

6. SHIPPING TERMS

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

SPECIAL TERMS AND CONDITIONS

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix. For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

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

Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

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

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

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

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

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address Indicated on the applicable Order document.

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

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased



SPECIAL TERMS AND CONDITIONS

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

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

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

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

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

10. ESTIMATED USAGE

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

11. PRICING

- 1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
 - a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
 - b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
 - c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
 - d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
 - e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
 - f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

SPECIAL TERMS AND CONDITIONS

- g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

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

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

SPECIAL TERMS AND CONDITIONS

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

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

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.
2. At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.
3. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.
4. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.
5. The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.
6. Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

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

16. PRODUCT DISCONTINUANCE

SPECIAL TERMS AND CONDITIONS

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

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

17. CONTRACT ADMINISTRATION

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

18. NOTICES

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

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
 1739 W. Jackson Street, MD 100P
 Phoenix, Arizona 85007-3276

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

SPECIAL TERMS AND CONDITIONS

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

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

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

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

20. INDEMNIFICATION CLAUSE

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

21. INSURANCE REQUIREMENTS

21.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way



SPECIAL TERMS AND CONDITIONS

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form

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

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

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

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

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

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

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

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automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - o Each Accident \$1,000,000
 - o Disease – Each Employee \$1,000,000
 - o Disease – Policy Limit \$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

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

21.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

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

21.6 Acceptability of Insurers Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

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not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

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

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

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

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

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

22. USAGE REPORT

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

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Usage report quarters shall be defined as follows:

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

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

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

23. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

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

25. CO-OP USAGE

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

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

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

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

26. POST AWARD MEETING

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

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1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

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Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - Federal Provisions
 - Special Terms and Conditions
 - Uniform Terms and Conditions
 - Statement or Scope of Work
 - Specifications
 - Attachments
 - Exhibits
 - Special Instructions to Offerors
 - Uniform Instructions to Offerors
 - Other documents referenced or included in the Solicitation
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.



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- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the



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State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph 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.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if



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applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

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

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

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

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

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

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

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6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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

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

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; 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.

6.4.2. Force Majeure shall not include the following occurrences:

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

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

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- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2. Fit for the intended purposes for which the materials are used;
 - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this

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Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

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

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

8. **State's Contractual Remedies**

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

8.2. Stop Work Order.

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

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

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

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

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

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

9. Contract Termination

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

UNIFORM TERMS AND CONDITIONS

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

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

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

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

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

10. **Contract Claims**

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

11. **Arbitration**

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

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

FEDERAL PROVISIONS

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance> are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Department and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

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The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(l)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49 U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.00.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1)) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at <https://www.fhwa.dot.gov/federalaid/stewardship>, between the Department and FHWA are incorporated by reference.

6. CIVIL RIGHTS REQUIREMENTS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply



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with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency may issue.
2. Race, Color, religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.
3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

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4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the

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Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:
 - (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,
 - (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
 - (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
 - (1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

- (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
- (b) FTA Project Manager if the Project is

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- administered by an FTA Headquarters Office,
or
(c) FTA Chief Counsel.

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER

POLLUTION CONTROL ACT Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Clean Air

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than \$150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed a certification shall be rejected as

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nonresponsive. This requirement does not apply to lower tier subcontractors.

11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as

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amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier sub- recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of \$100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government- financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

16. COPYRIGHT AND PATENT

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless ADOT against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of this contract performance or use by ADOT of materials furnished or work performed under this contract. ADOT shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

Standard Patent Rights required pursuant to 37 CFR 401.14:

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C.

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2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15

U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention

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throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under

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paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic

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subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a

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post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither

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it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

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(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

18. SAFE OPERATION OF MOTOR VEHICLES

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and

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(2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award.

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20. DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

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3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: any firm that is not a DBE.

(E) Race-Conscious (RC): a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): a business that meets all of the following conditions:

- (1) Operates as a for-profit business registered to do business in Arizona;
- (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes

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or use of American products, materials, or labor;

- (3) Is independently owned and operated;
- (4) Is not dominant in its field on a national basis; and
- (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) "Women;"
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

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Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction. All proposers should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of
Transportation Business
Engagement and Compliance
Office 1801 W. Jefferson St.,
Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor- Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the contractor uses a percentage of DBEs, as defined herein, to meet the contract specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract

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on a prime contract that does not carry a DBE contract goal.

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

The DBE provisions are applicable to all contractors including DBE contractors.

6.0 Certification and Registration:

6.1 DBE Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at <http://www.azutracs.com/>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for

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DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT strongly encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.

The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

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9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.1 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.2 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

11.1 Race Neutral Contract (With No DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

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NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Offer submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Offer.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

Subcontracts:

- a. Sub-Contract Terms:

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1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.
2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at <https://adot.dbesystem.com>. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.
3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.

b. Sub-Contract Payments

1. **Retention:** If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.
2. **No Set-offs Arising from Other Contracts:** If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.
3. **Partial Payment:** The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
4. **Final Payment:** The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
5. **Payment Reporting:** For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any

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tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web-based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department's web-based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department's DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the contractor fails to submit timely payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages

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shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.
7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:
 - The contractor does not pay the full amount of any invoice from a subcontractor within seven days of receipt of a progress payment from the Department, or
 - The monthly estimate does not include all work claimed by a subcontractor to have been performed.

The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:
 - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the

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contract.

- (i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
 - (iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.
- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
 - (ii) Terminate the contract for default in accordance with this Contract, and/or
 - (iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
 - (iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

Credit is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the

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proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

14.03 Effect of Loss of DBE Eligibility:

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For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intends to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

14.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually

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performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such

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remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the Engineer and BECO.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

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21. NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:

- a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.
- b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.
- d. Post in conspicuous places available to employees and applicants for employment, the following notice:

"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

- e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or

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indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

- g. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
 - h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
2. In the event of the Consultant's noncompliance with the NONDISCRIMINATION provision (Section A) of this Contract, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Consultant under the Contract until the Consultant complies,
 - and/or;
 - b. Cancellation, termination, or suspension of the Contract, in whole or in part.
 3. The Consultant shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
 4. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

- a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.
- e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed

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with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

26. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

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conducted in a manner that provides full and open competition.

27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

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32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors (<https://www.sam.gov/SAM/>) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

33. OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the Department.

34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP)

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Beneficiaries,” 70 Fed. Reg. 74087, December 14, 2005.

37. ENVIRONMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42

U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

38. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

39. GEOGRAPHIC INFORMATION RELATED TO SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

41. ORGANIZATIONAL CONFLICTS OF INTEREST

FEDERAL PROVISIONS

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
 - (a) To that Third Party Participant or another Third Party Participant performing the Project work, and
 - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:
 - (a) Any instances of organizational conflict of interest, or
 - (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

42. VETERANS PREFERENCE

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

FEDERAL PROVISIONS

44. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

45. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

44. BUS TESTING

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus

FEDERAL PROVISIONS

model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46. E-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

EXHIBIT 1

Title VI/Non-Discrimination Assurances

Appendix A

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

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

EXHIBIT 2

Title VI/Non-Discrimination Assurances

Appendix E

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

Pertinent Non-Discrimination Authorities:

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

This exhibit outlines the content required for the quarterly usage report. Usage reports will be submitted to the appropriate Procurement Officer in accordance with the requirements specified in Special Terms and Conditions. The Department reserves the right to make additions, deletions and changes as deemed necessary.

Contract ID/Code:		Contact Name:		Alternate Contact Name:	
Contract Label/Description:		Contact Phone Number:		Alternate Contact Phone Number:	
Contractor:		Contact Email:		Alternate Contact Email:	
Contractor Address:					

[illegible]



EXHIBIT 4

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

(Recipient's name)
Certifies that a resident inspector,

(Name of inspector)
Was at

(the manufacturer's)
manufacturing site during the period of manufacture of the buses,

(description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

(Recipient's name)
Certifies that a resident inspector,

(Name of inspector)
Was at

(the manufacturer's)
manufacturing site during the period of manufacture of the buses,

(description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date ____/____/____
Title _____

EXHIBIT 5

PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
PRE-AWARD AUDIT (before issuing purchase order)		
Pre-award audit requirements.		Master Agreement;
A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		49 CFR §663.21
49 CFR 661.13 Grantee Responsibility		
(a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services.		
a. Buy America. Domestic preference procurement requirements of:		49 CFR §663.13
(1) 49 U.S.C. § 5323(j), as amended by FAST Act, and		
(2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes—		
(a) A Buy America certification as described in §663.25 of this part;		49 CFR §663.23
(b) A purchaser's requirements certification as described in §663.27 of this part; and		
(c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		
Met? Y/N (if NO 1b, 1 REQ'D)	(1) A Buy America certification:	
	a) There is a letter from FTA which grants a waiver OR	
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists—	49 CFR §663.25
	1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and	
	2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification:	
	a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and	49 CFR §663.27
	b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply.	
	a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

EXHIBIT 6

PURCHASER'S PRE-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		
Description		
Program/Phase/Amount s		
Purchaser's Pre-Award Requirements Certification 49 CFR §663.27		
I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and		
I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's		
	Signature	
	Date Signed	

EXHIBIT 7

PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis* (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—		
(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or		
(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—		
(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and		
(2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.		
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—	
	(1) Provide accurate records of all vehicle construction activities; and	
	(2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of:	
	(1) Ten or fewer buses; or	
	(2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or	
	(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 7

PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/A mounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation LAW/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis* (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes— (a) A post-delivery Buy America certification as described in §663.35 of this part; §663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that— (a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and §663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that— (a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications. (b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications. (c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part. §663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards. §663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 8

PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		
Description		
Program/Phase/Amount s		
Purchaser's Post-Award Requirements Certification 49 CFR §663.37		
I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and		
I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's		
	Signature	
	Date Signed	



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: One (1)
DESCRIPTION: New Vehicles Purchase	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. The solicitation due date has been changed from January 17, 2022 at 3:00 PM MST to January 19, 2022 at 3:00 PM MST.
2. All other terms, conditions and provisions of this solicitation remain unchanged.



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 2.1** "The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures."
- b. **Paragraph 3.3.1, 3.5.1 and 3.5.2** is hereby removed.
- c. **Paragraph 4.1:** "The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency."
- d. **Paragraph 4.1.1** is hereby removed.
- e. **Paragraph 4.4.1:** "The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency. "
- f. **Paragraph 4.6.1:** " Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW."

2. Special Terms and Conditions

The following sections are hereby modified to read:

- a. **Paragraph 11.1, (a-g):** "Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
 - a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.



ARIZONA DEPARTMENT OF TRANSPORTATION
 1739 W. Jackson Street, MD 100P
 Phoenix, AZ 85007
 602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Three (3)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."
- b. **Paragraph 3.10:** "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

- b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
- c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
- d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
- e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
- f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.
- g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order. "

b. Paragraph 22 is hereby replaced with the following: "The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

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

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

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

c. Paragraph 25: Co-op administrative fee has hereby been removed.



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

3. **Offer Response Form** is hereby replaced with Revision Two (2) attachment.
4. All other terms, conditions and provisions of this solicitation remain unchanged.



ARIZONA DEPARTMENT OF TRANSPORTATION
 1739 W. Jackson Street, MD 100P
 Phoenix, AZ 85007
 602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Three (3)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."
- b. **Paragraph 3.10:** "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

Offer Response Form for New Vehicle Purchases Revision Two (2)

*Please respond to the following items according to the instructions below. Each response should demonstrate the Offeror's ability to satisfy the Specifications requirements. **Failure to respond may negatively impact the option to award.***

- 1.1.** The Contractor shall provide the goods/services described in any or all of the contract categories. Indicate the categories that apply to your offer:

- ☒ **Category One: Phase One (1) Vehicle Purchases**
- ☒ **Category Two: Phase Two (2) Vehicle Purchases**
- ☒ **Category Three: FTA Funded Vehicles**

- 1.2 PHASE ONE (1) Pricing for New Vehicle Purchases: Price List:** (Any manufacturer available by Offeror shall be written in below which includes all optional equipment) Price shall be a fixed percentage off MSRP. The detailed price list for each available model will be sent to the Procurement Officer as they become available during the contract term. If multiple level discounts apply for that specific category, you may provide the minimum percentage. *Detailed price lists will not be required at the time of Proposal submittal.* Do not provide pricing on any other format other than what is provided below:

Phase One (1) Manufacture/Category (i.e. Silverado, F150, RAM 1500, Focus, Cruze, Dart etc.) Per Minimum Specifications	Percentage (%) Off of Manufacture Retail Price (MSRP)
Ford Mustang	11%
Ford Mustang Mach-e	-1%
Ford EcoSport	8%
Ford Escape	9%
Ford Edge	13%
Ford Explorer	11%
Ford Expedition	13%
Ford Bronco Sport	10%
Ford Bronco	8%
Ford Maverick	6%
Ford Ranger	14%
Ford F150	11%
Ford F-Super Duty	12%

Offer Response Form for New Vehicle Purchases Revision Two (2)

Ford Transit Connect	11%
Ford Transit	9%

1.3 PHASE TWO (2) Pricing for New Vehicle Purchases: (Any manufacturer available by Offeror shall be written in below which includes all optional equipment) Price shall be a fixed percentage off MSRP. The detailed price list for each available model will be sent to the Procurement Officer as they become available during the contract term. If multiple level discounts apply for that specific category, you may provide the minimum percentage. *Detailed price lists will not be required at the time of Proposal submittal.* Do not provide pricing on any other format other than what is provided below:

Phase One (1) Manufacture/Category (i.e. Silverado, F150, RAM 1500, Focus, Cruze, Dart etc.) Per Minimum Specifications	Percentage (%) Off of Manufacture Retail Price (MSRP)
Ford Mustang	2%
Ford Mustang Mach-e	-5%
Ford EcoSport	3%
Ford Escape	3%
Ford Edge	4%
Ford Explorer	3%
Ford Expedition	4%
Ford Bronco Sport	3%
Ford Bronco	2%
Ford Maverick	3%
Ford Ranger	8%
Ford F150	1%
Ford F-Super Duty	8%
Ford Transit Connect	7%
Ford Transit	5%



Offer Response Form for New Vehicle Purchases
Revision Two (2)

Offer Response Form for New Vehicle Purchases

Revision Two (2)

1.4 Delivery Fees: If the contractor offers delivery for the following counties, they must indicate and include any delivery fee associated with those areas as applicable.

County	Delivery Fee \$	County	Delivery Fee \$	County	Delivery Fee \$
☒ Apache	\$300	☒ Greenlee	\$300	☒ Pima	\$250
☒ Cochise	\$300	☒ La Paz	\$300	☒ Pinal	\$0
☒ Coconino	\$250	☒ Maricopa	\$0	☒ Santa Cruz	\$300
☒ Gila	\$0	☒ Mohave	\$350	☒ Yavapai	\$150
☒ Graham	\$250	☒ Navajo	\$250	☒ Yuma	\$300

1.5 Evaluation Pricing: The Contractor shall submit pricing for the following Vehicles. The vehicles listed which is representative of the scope of work that will be performed under this Contract, and therefore constitutes a fair method for determining price fair and reasonable:

1.5.1 Phase One (1) Evaluation Pricing:

<u>Estimated Usage Quantity</u>	<u>PHASE ONE (1) Base Model Vehicle</u>	<u>Base Price for Phase One (1)</u>	<u>Additional Information</u>
75	Sports Utility Vehicle (SUV) (<i>base model</i>) Per Minimum Specifications	\$22,746.00	
25	One (1) Ton Cargo Van (<i>base model</i>) Per Minimum Specifications	\$35,158.00	
50	1/2 Ton Truck Regular Cab (<i>base model</i>) Per Minimum Specifications	\$27,723.00	



Offer Response Form for New Vehicle Purchases Revision Two (2)

1.5.2. Phase Two (2) Evaluation Pricing:

<u>Estimated Usage Quantity</u>	<u>PHASE TWO (2) Base Model Vehicle</u>	<u>Base Price for Phase TWO (2)</u>	<u>Additional Information</u>
25	Sports Utility Vehicle (SUV) (<i>base model</i>) Per Minimum Specifications	\$25,415.00	
15	One (1) Ton Cargo Van (<i>base model</i>) Per Minimum Specifications	\$39,890.00	
25	1/2 Ton Truck Regular Cab (<i>base model</i>) Per Minimum Specifications	\$31,702.00	

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
SAN TAN AUTO PARTNERS, LLC,
D/B/A SAN TAN FORD

[Quote]

See following pages.

**Government Fleet Account Manager**

Joe Sanchez (480) 621-3741

joesanchez@santanford.com

Department Fax (480) 621-3796

Date: August 12, 2022Customer: Town of Chino ValleyLine Item/State Contract #: K8A / CTR059323Vehicle Description: 2023 Ford Police Interceptor Utilitywith 3.3L FFV V6 Engine

Base Bid Price	\$41,879.00
-----------------------	--------------------

Upgrade Options

1	Cargo Dome Lamp	50.00
2	Courtesy Lights Disabled	25.00
3	Driver Side Spot Light	395.00
4	Key Code 1284X	50.00
5	Rear Mount Plate	45.00
6	Receiver Hitch	Standard Equipment
7	Remote Keyless Entry CREDIT	(320.00)
8	Rear A/C Credit	(573.00)
9	Window Tint	250.00
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

 (\$78.00)

Bid Price (with options)	\$41,801.00
---------------------------------	--------------------

Tire Tax	5.00
Sales Tax (7.80%)	3,260.48

Ford Extended Service Plan

Transportation Fee	\$150.00
--------------------	-----------------

Total Delivered Price	\$45,216.48
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Notes:

Thank You,
Joe



CNGP530

VEHICLE ORDER CONFIRMATION

08/12/22 12:36:03

==>

Dealer: F71182

2023 EXPLORER 4-DOOR

Page: 1 of 1

Order No: 8585 Priority: L5 Ord FIN: KA595 Order Type: 5B Price Level: 315

Ord Code: 500A Cust/Flt Name: CHINO VALLEY PO Number:

RETAIL

RETAIL

K8A	4DR AWD POLICE	\$47165		FLEX-FUEL	
	.119" WHEELBASE		153	FRT LICENSE BKT	NC
YZ	OXFORD WHITE			SP FLT ACCT CR	
9	CLTH BKTS/VNL R			FUEL CHARGE	
6	EBONY			DEST AND DELIV	1495
500A	EQUIP GRP		TOTAL	BASE AND OPTIONS	46395
	.AM/FM STEREO		TOTAL		46395
99B	3.3L V6 TI-VCT	(2830)	*THIS IS NOT AN INVOICE*		
44U	10SPD AUTO TRAN	NC			
17T	CARGO DOME LAMP	50			
425	50 STATE EMISS	NC			
43D	COURTESY DISABL	25			
51R	DRV LED SPT LMP	395			
59B	KEY CODE 1284X	50			
85R	RR MOUNT PLATE	45			

F1=Help

F2=Return to Order

F3/F12=Veh Ord Menu

F4=Submit

F5=Add to Library

S099 - PRESS F4 TO SUBMIT

QD07488

V1DP0447

2,6

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ARIZONA EMERGENCY PRODUCTS, INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this “Agreement”) is entered into as of October 11, 2022, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Arizona Emergency Products, Inc., an Arizona corporation (the “Vendor”).

RECITALS

A. After a competitive procurement process, the State of Arizona (the “State”) entered into Contract No. CTR049796, dated May 18, 2020, as amended (the “State Contract”), for the Vendor to provide law enforcement vehicle upfitting services and parts. A copy of the State 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 materials and services under the State Contract, at its discretion and with the agreement of the awarded Vendor.

C. The Town and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the State Contract and this Agreement, (ii) establishing the terms and conditions by which the Vendor may provide the Town with vehicle upfitting services and parts, as more particularly set forth in Section 2 below (the “Materials and Services”), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials 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 Vendor 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 June 30, 2022, unless terminated as otherwise provided in this Agreement or the State Contract.

2. Scope of Work. Vendor shall provide the Materials and Services to the Town under the terms and conditions of the State Contract and in the configuration set forth in the Quote attached hereto as Exhibit B and incorporated herein by reference.

3. Inspection; Acceptance. The Materials and Services are subject to final inspection and acceptance by the Town. Materials and Services failing to conform to the requirements of this Agreement and/or the State Contract will be held at the Vendor’s risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of non-

conforming Materials and Services, the Town may elect to do either of the following by written notice to the Vendor: (i) waive the non-conformance or (ii) bring the Materials and Services into compliance and withhold the cost of same from any payments due to the Vendor.

4. Compensation. The Town shall pay Vendor an amount not to exceed \$25,941.98 for the Materials and Services at the unit rate set forth in the State Contract and as more particularly set forth in the Quote.

5. Payments. The Town shall pay the Vendor upon delivery and acceptance of the Materials and Services and upon submission and approval of the invoice. The invoice shall (i) contain a reference to this Agreement and the State Contract and (ii) document the Materials and Services delivered and accepted to date. Additionally, an invoice submitted without referencing this Agreement and the State Contract will be subject to rejection and may be returned.

6. Records and Audit Rights. To ensure that the Vendor and its subcontractors are complying with the warranty under Section 7 below, Vendor'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 Vendor 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 Vendor'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, Vendor 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 Vendor pursuant to this Agreement. Vendor 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 Vendor or its subcontractors reasonable advance notice of intended audits. Vendor 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 Vendor 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). Vendor'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. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a "boycott" of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

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 Yavapai 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 Vendor 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. Vendor 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, including any amendments, the State Contract, the Quote 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 State 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 State Contract shall not alter such terms and conditions or relieve Vendor 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 State Contract, the Town shall be afforded all of the rights and privileges afforded to the State and shall be the "State" (as defined in the State Contract) for the purposes of the portions of the State 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 the State to the extent provided under the State 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 Vendor’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 (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 Vendor:	Arizona Emergency Products, Inc. 3433 East Wood Street Phoenix, Arizona 85040 Attn: _____

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

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

ARIZONA EMERGENCY PRODUCTS,
INC., an Arizona corporation

By:_____

Name:_____

Title:_____

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ARIZONA EMERGENCY PRODUCTS, INC.

[State Contract]

See following pages.

Solicitation No. **BPM002158**
Law Enforcement Vehicle Upfitting Services and Parts Purchase

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Law Enforcement Vehicle Uprfitting Services and Parts in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	1.					
	Date		initial			
Revised Offers:	2.			3.		4.
	date #1		Initial	date #1		initial
	5.			6.		7.
	date #4		initial	date #5		initial
Best and Final Offer:	8.					
	Date		initial			

Offeror company name

3433 E Wood Street

Address

Phoenix, AZ 85040

City | State | ZIP

86-1024040

Federal tax identifier (EIN or SSN)

x [Signature]
Signature of person authorized to sign Offer

Tammy Reutter

Key Account Representative

Printed name and title

Tammy Reutter

Key Account Representative

Contact name and title

Tammy.Reutter@Aep-na.com 602-453-9111

Contact Email Address

Contact phone number

CERTIFICATION: By signature in the above, Offeror certifies that it:

1. will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11243, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
2. 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. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by the latest date and number at the top of this form (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR049796 The effective date of the Contract is: 5/18/20 Contract awarded 5/18/2020
Date Date

[Signature]
Procurement Officer Signature

Patricia Jonas, CPPB

PART 3 of the Solicitation Documents
Template version 6.0 (18-NOV-2019)

SECTION 3-B: Offer Forms
Page 15 of 46

Available online at: [APPAZ.gov](http://www.appraz.gov)

3



ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

DOUGLAS A. DUCEY
Governor

FRANK L. MILSTEAD
Director

May 18, 2020

Ms. Tammy Reutter
Arizona Emergency Products
3433 E Wood Street
Phoenix, AZ 85040

Re: Award of Contract No. CTR049796 Law Enforcement Vehicle Upfitting Services

Dear Ms. Reutter:

Thank you for submitting a response to Request for Proposal No. BPM002158. The proposal received from Arizona Emergency Products was evaluated in accordance with the evaluation factors set forth in the solicitation. I am pleased to inform you that your company's bid has been selected for award. The initial contract term shall begin on May 18, 2020 and terminate on May 17, 2021 (4 additional annual renewals are available through 5/18/25).

The procurement file for this solicitation, including evaluation documents and resultant contract, are available via the State's e-Procurement system, APP.

In accordance with Special Term and Condition of the contract and prior to beginning work under the contract, your company is required to submit a Certificate of Insurance. The certificate of insurance shall indicate that your company is in compliance with all the insurance requirements and language contained in the solicitation. Please submit your certificate of insurance to me within five (5) days of receipt of this correspondence.

You are cautioned not to begin any services under the contract until a purchase order is executed against the contract through APP.

If you have any questions regarding your company's contract, please contact me at 602-223-2451. On behalf of the State of Arizona and the Department of Public Safety, I congratulate you on your contract award.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Jonas".

Patricia Jonas, CPPB
Sr. Procurement Specialist



Request for Proposal

Solicitation No. **BPM002158**

Description: Law Enforcement Vehicle Upfitting Services and Parts Purchase

Arizona Department of Administration

State Procurement Office

100 N 15th Ave., Suite 402
Phoenix, AZ 85007

Part 1: Solicitation Summary

1.0 What the State Is Soliciting

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501 is seeking to establish one or more “statewide” contracts to provide law enforcement vehicle upfitting services and parts purchase in accordance with the terms, conditions, scope of work/specifications, for the price(s) offered herein.

How State Anticipates Contracting:

The State anticipates **to award one or more contracts**. Whether or not it actually enters into any contracts, how many contracts it enters into, and how work is awarded between those contracts are all at the State’s discretion. Further, the State will use any awarded contracts on an as-needed basis; it makes no guarantee as to its actual spending under them.

The Special Terms and Conditions provide a more detailed definition of Eligible Agencies.

List of all state agencies is available at: <https://azdirect.az.gov/agencies>

Persons With Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange for the accommodation.

2.0 What’s in the Solicitation

Part 1	Section 1: Solicitation Summary	<i>Part 1 BPM002158_OPEN_FIRST_</i> Law Enforcement Vehicle Upfitting Services and Parts Purchase.pdf
Part 2	Section 2-A: Scope of Work	<i>Part 2 BPM002158_RFP_</i> Law Enforcement Vehicle Upfitting Services and Parts Purchase Scope of Work.pdf
	Section 2-B: Pricing Document	
	Section 2-C: Special Terms and Conditions	
	Section 2-D: Uniform Terms and Conditions	
Part 3	Section 3-A: Instructions to Offerors	<i>Part_3_BPM002158Offer_Forms_</i> Description: Law Enforcement Vehicle Upfitting Services and Parts Purchase.doc
	Section 3-B: Offer forms	



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3.0 How and When Proposals Are Due

Proposals will only be accepted **online** in “The State’s e-Procurement System” at <https://app.az.gov> until the “Bid/Offer Due Date” indicated in “The State’s e-Procurement System” for the Solicitation No. shown at the top of this page.

Proposals must be in the State Procurement Office’s possession online no later than that deadline.

Submit technical inquiries about navigating and/or submitting proposals in the State’s e-Procurement System to the State’s e-Procurement System Help Desk:

- by phone at (602) 542-7600, option2; or
- by email to app@azdoa.gov

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in “The State’s e-Procurement System”.

4.0 Pre-Offer Conference

The State **will not** conduct a Pre-Offer Conference for this solicitation.

5.0 Inquiries

Any question related to this Request for Proposal shall be submitted utilizing the State’s “**Discussions with Buyer**” Tab in the e-procurement system. The Offeror shall not contact or ask questions of the department for which the requirement is being procured.

OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.

End of Section 1

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Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2-A: Scope of Work

1.0 Introduction

The Arizona Department of Administration, State Procurement Office on behalf of the State of Arizona (hereinafter referred to as the "State") is responsible for administering the contract (hereinafter the "Program") for all state departments and agencies (hereinafter referred to as "Eligible Agencies") The Program is self-funded for all eligible participants under A.R.S. §41-621.

The State is seeking proposals from qualified organizations to provide law enforcement vehicle upfitting services and parts purchase for the State's Program to assist the Procurement Office in administering and maintaining a comprehensive and cost-effective Program.

2.0 Purpose and Background

The Department of Public Safety (DPS) on behalf of the eligible State departments and agencies seeks to enter into a term type contract with a qualified firm(s) to provide as needed when needed fleet vehicle upfitting services in accordance with the terms, conditions, scope of work/specifications, for the price(s) offered herein.

DPS maintains a fleet of various makes and models of pursuit and support vehicles most of which require initial, reconfiguration/modification, repair, disassembly and other related vehicle up-fitting services. The estimated number of vehicles requiring these services is approximately 200 annually. Quantities referenced are annual estimates only; no guarantee as to actual quantities is expressed or implied.

3.0 Brand Name Type Specification: This solicitation contains Brand Name type specifications as specifically authorized under Arizona Administrative Code (A.A.C.) R2-7-403 for the parts, components and assemblies specified herein.

4.0 Vehicle Types: Various makes, models and years of cars, trucks and Jeeps to include, but not limited to, Ford, Chevrolet, Dodge, Chrysler, Toyota, Nissan, and BMW and Honda motorcycles.

5.0 Scope of Services

Contractor shall furnish all labor, labor burdens, equipment, tools, materials, accessories, parts, components, transportation, services, permits, insurance, per diem, all applicable taxes, and all other items of expense required to provide:



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- 5.1 Vehicle upfitting services in accordance with terms, conditions, and pricing specified in the Contract.
- 5.2 Supply parts, components and assemblies without upfitting services in accordance with discount off catalog pricing specified on Price Sheet and/or
- 5.3 Contractor provided "on-site" at DPS Fleet Facility, optional upfitting services in accordance with terms, conditions and pricing specified.

6.0 Specifications

Contractor shall furnish all labor, labor burdens, equipment, tools, materials, accessories, parts, components, transportation, services, permits, insurance, per diem, all applicable taxes, and all other items of expense required to provide:

- 6.1 Vehicle upfitting services in accordance with terms, conditions and pricing specified in the Contract;
- 6.2 Supply parts, components and assemblies without upfitting services in accordance with discount off catalog pricing specified on Price Sheet Attachment B; and/or
- 6.3 Contractor provided "on-site" at DPS Fleet Facility, optional upfitting services in accordance with terms, conditions and pricing specified.

7.0 General Specifications: Contractor Shall:

- 7.1 Have all services performed by qualified/experienced technicians and personnel;
- 7.2 Perform and complete all services in accordance with all applicable industry, best practice, OEM vehicle, OEM equipment, specifications and standards as well as any DPS supplied specifications and DPS/Fleet authorized task orders;
- 7.3 At DPS/Fleet request, pick up and deliver DPS vehicles to DPS Fleet Facility at 2610 S. 16th Street, Phoenix, AZ 85034 (upon completion and buyoff by DPS);
- 7.4 Maintain, secure and store all DPS vehicles under its care and custody to prevent damage, vandalism and theft;
- 7.5 Upon completion of services, clean, wash exterior and make ready for DPS buy off (i.e. removal of excess grease/lubricants, finger/handprints, vacuum vehicle's interior and trunk areas, etc.) of all vehicles;
- 7.6 Be open for business during normal business hours, Monday through Friday (excluding state holidays);
- 7.7 Complete all installations within mutually agreed upon written timeframes;
- 7.8 Upon request, provide quotes for the purchase of parts, components and assemblies without up-fitting services in accordance with terms, conditions and pricing specified in the Contract.

8.0 Technical Specifications: Contractor Shall:

- 8.1 Install all required antenna NMO mounts with rain caps for laptop computer systems; GPS and the radio systems with rain caps. Any and all equipment installed outside of the interior cabin shall be made weatherproof per OEM specifications. This includes pass through wiring from interior to exterior (and/or contrariwise) of vehicle. Antennas, if specified, shall be shipped loose in vehicle(s). Weatherproof, temporary covers shall be used if mount is not weatherproof without antenna.
- 8.2 On all fifty (50) amp or higher circuits, in addition to crimping the wire terminals, also solder all terminals to reduce intermittent shorts caused by, but may not be limited to, road vibration. Soldered connectors shall also be of the seamless variety and be shrink-wrapped for environmental protection;
- 8.3 Have all wiring run in protective wire looms and be secured through the use of wire clamps and/or plastic nylon tie wraps;



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8.4 In the event that DPS/Fleet provides wiring diagram schematics for specific up-fitting requirements, Contractor shall wire all associated vehicles according the wiring diagram schematics. Any proposed revisions to DPS/Fleet wiring diagrams shall be requested in writing and preapproved in writing by DPS/Fleet.

9.0 Task Order Scope of Work Requests ("TOSOWR"):

State Agencies may, at its sole option, issue an individual TOSOWR to a single Contractor or multiple Contractors of its selection for TOSOWR's anticipated to be under \$10,000.00. TOSOWR's anticipated to be over \$10,000.00 shall be issued to multiple Contractors in accordance with the Scope of Work/Specifications of this Contract. TOSOWR's shall be issued on an as needed when needed basis. Individual TOSOWR's shall specify the following:

- 9.1 Description of the type of services (i.e. scope of work) to be performed;
- 9.2 Vehicle type (vehicle No., year, make, model and VIN #);
- 9.3 Parts, components and assemblies required for upfitting;
- 9.4 Completion date for services; and
- 9.5 Any other requirements specific to the TOSOWR.

10.0 Task Order Offers:

Upon receipt of individual TOSOWR's, Contractor(s) shall submit a task order offer on or before the date specified on TOSOWR. Offered pricing under a task order offer shall be all inclusive for completion of the task order. Task order offers shall also, at a minimum:

- 10.1 Provide a detailed plan and schedule to complete the TOSOWR;
- 10.2 Specify the contract hourly rate multiplied by the total number of hours required to complete the TOSOWR;
- 10.3 Specify net pricing (inclusive of all applicable discounts) for all parts, components and assemblies supplied by the Contractor and specified in TOSOWR; and
- 10.4 All costs associated with responding to a TOSOWR shall be borne by the Contractor(s).

11.0 Task Order Offers; Review/Acceptance:

Upon receipt and review of individual task order offers, State Agencies may select the individual task order offer determined to be fair and reasonable and in the best interest of the State for the specified task (selections may include, but may not be limited to, lowest all-inclusive price offered, proposed schedules for completion of the specified task, offered resources and project start dates). Task Order Offers accepted shall be signed by both parties.

12.0 Task Order Revisions:

State Agencies may allow for revisions to individual task order offers in the event of unforeseen circumstances. Should the State determine that revisions to original task order offers are necessary, Contractor shall provide the following:

- 12.1 Written documentation detailing the additional tasks, schedules and basis (specific reasons) for the revisions;
- 12.2 All pricing (hourly rate times the fixed number of hours) required to perform the revised up-fitting services specified;
- 12.3 Net pricing (inclusive of all applicable discounts) for all parts, components and assemblies supplied by the Contractor/required to perform the revised up-fitting services specified; and



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12.4 Revision documentation shall be mutually agreed upon and signed by both parties.

13.0 Approval, Inspection, Buy Off of Services: State Agencies shall have the final authority to:

13.1 Perform final inspection and buy off of services.

13.1.1 All rework that may be needed as a result of inspections shall be immediately corrected, with all costs borne by the Contractor.

14.0 Contractor Provided "On-Site" (DPS Fleet Facility) Optional Upfitting Services:

On-site upfitting services are those services provided as needed when needed by the Contractor at DPS Fleet Services, 2610 South 16th Street, Phoenix, AZ 85034. When needed, Contractor shall:

14.1 Provide qualified/experienced technicians and personnel to perform specified services at the hourly labor rate specified in price sheet of the Contract;

14.2 Perform and complete all services in accordance with all applicable industry, best practice, OEM vehicle, OEM equipment, specifications and standards as well as any DPS supplied specifications and task orders;

14.2.1 Upfitting services shall be those performed under Scope of Work/Specification paragraphs 7 through 8;

14.2.2 Contractor shall not be entitled to any costs, such as, but may not be limited to, times relating to travel to and from DPS/Fleet and/or any times when on-site Contractor (i.e. all on-site personnel) is not working under DPS/Fleet issued task orders.

14.2.3 All on-site Contractor personnel shall be subject to Criminal history records, fingerprint background clearance and drug screening in accordance with paragraph 17.0.

15.0 Purchase of parts, components and assemblies:

DPS shall have the ability to purchase parts, components and assemblies without upfitting service contained in contracted established catalogs at the contracted discounted rates on an as needed when needed basis. Purchases shall be supported by a DPS issued direct release purchase order(s).

16.0 Delivery:

Unless stated otherwise in the contract generally or in the applicable Order particularly, Contractor shall make delivery within 60 business days after receiving each Order. Notification shall be communicated to the ordering agency when contractor is unable to meet delivery deadline.

17.0 Background Checks:

Personnel designated to work on site shall be subject to:

- A DPS and/or alternate law enforcement agency criminal history records clearance review;
- A DPS and/or alternate law enforcement agency fingerprint clearance review;
- A DPS initiated drug screen/testing and clearance review

All proposed on-site Contract personnel and/or subcontract personnel shall:

- Complete and submit a DPS confidential background/drug screening questionnaire/affidavit form;



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- Produce picture identification, such as a current state-issued driver's license to validate the individual's identity (required at time of fingerprinting/drug screening);
- Be subject to being fingerprinted
- Be subject to drug screening

Upon review of individual results, DPS shall issue either an "Eligible to Work" or "Not Eligible to Work" determination to the Contractor and Contract Coordinator for that individual. Examples of areas that may result in "not eligible to work" determinations are, but may not be limited to, certain:

- Felony convictions;
- Misdemeanor convictions (not including traffic or parking violations);
- Outstanding warrants (including traffic and parking violations);
- Current parole or probation statutes;
- Current law enforcement investigative statutes; and
- Driving history reports.

In accordance with state law, all information obtained by these services shall not be divulged to any individual, employer or unauthorized party. Contractor and Contract Coordinator shall only be advised of an individual's "Eligible to Work" or "Not Eligible to Work" status. Determinations shall be made on a case-by-case basis and shall be final. DPS Human Resource bureau will assist the Contractor with testing facility locations times. Although every effort will be made to minimize Contractor travel and processing times, no timeframes are expressed or implied. DPS may also, at its sole discretion, request additional annual and/or periodic clearance reviews of onsite Contract personnel. All associated costs shall be borne by the Contractor.

18.0 Reporting Requirements

Monthly reports, or more often as requested by agency, shall be provided concerning the status of open purchase orders and causes for possible delivery delays.

SECTION 2-A SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			

End of Section 2-A



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SECTION 2-B: Pricing Document

1.0 Compensation

1.1 COMPENSATION METHOD

Contractor will be compensated based on the final detailed written quote approved by the Customer. Pricing shall not exceed the labor rates indicated on the Pricing Document.

2.0 Pricing

2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment 4 Price Sheet, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.1.2 If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.2 PRICING-ALL-INCLUSIVE:

2.2.1 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.3 PRICE INCREASES:

2.3.1 The State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

(a) Initial Contract prices will be honored for one year after award of Contract.

(b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.



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- (c) All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.4 PRICE REDUCTIONS:

- 2.4.1 Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

2.5 ADDITIONAL CHARGES:

- 2.5.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.6 TRAVEL:

- 2.6.1 Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at <https://gao.az.gov/travel>. The Eligible Entity / Customer shall reject any claim for travel reimbursement without prior written approval.

3.0 Funding

No particular funding considerations apart from paragraph 4.4 [*Availability of Funds for the Next State fiscal year*] and 4.5 [*Availability of Funds for the current State fiscal year*] of the Uniform Terms and Conditions have been identified as of the Solicitation date.

4.0 Invoicing

- 4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process.
- 4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the State's e-Procurement System PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●



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Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes <i>(as a separate invoice line item)</i>	●
Upcharge shipping/freight, etc. <i>(as a separate invoice line item)</i>	Materials only
Total invoice amount due	●

- 4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Materials or Services that have not been authorized on an acknowledged Order;
 2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
 3. Materials or Services that are the subject of a Contract Amendment that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
- 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
- 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
- (a) are sent to an incorrect address;
 - (b) do not reference the correct State contract number; or
 - (c) are payable to any Person other than the Contractor.
- 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions



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- 5.2 **JOINT CHECKS OR DIRECT PAY.** applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 **RECOVERY OF OVER-PAYMENT.** If applicable Eligible Agency Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 **PAYMENTS TO SUBCONTRACTORS.** Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency Buyer applicable to their services.
- 5.5 **PURCHASING CARD.** Applicable Eligible Agency Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 **AUTOMATED CLEARING HOUSE.** Applicable Eligible Agency Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:

<https://gao.az.gov/afis/vendor-information>

6.0 Exhibits to the Pricing Document

See Attachment 4 Price Sheet

End of Section 2-B



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SECTION 2-C: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- | | |
|---|---|
| 1.1 Acceptance | "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services. |
| 1.2 Accepted Offer | If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer. |
| 1.3 Arizona Procurement Code; A.R.S.; A.A.C. | "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the <u>Instructions to Offerors</u> . |
| 1.4 Arizona TPT | "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:
https://www.azdor.gov/business/transactionprivilegetax.aspx . |
| 1.5 Attachment | "Attachment" means any item that: <ol style="list-style-type: none"> 1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); 2. was attached to an Offer when submitted; and 3. was included in the Accepted Offer. |
| 1.6 Pricing Document | "Pricing Document" means <u>Section 2-B of Part 2 of the Solicitation Documents</u> , provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions. |
| 1.7 Contract Amendment | "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. |
| 1.8 Contract Terms and Conditions | "Contract Terms and Conditions" means the <u>Special Terms and Conditions</u> and these Uniform Terms and Conditions taken collectively. |
| 1.9 Contractor | "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State. |
| 1.10 Contractor Indemnitor | "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors. |
| 1.11 Eligible Agency | If the <u>Special Terms and Conditions</u> indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a |



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- “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.
- 1.12 Indemnified Basic Claims** “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.13 Instructions to Offerors** “Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.
- 1.14 Order** “Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:
1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
 2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
 3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.
- 1.15 The State’s e-Procurement System** “The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.
- NOTE (1): Technical Bulletin No. 020 is available online at:
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>
- 1.16 State** With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.17 State Indemnitees** “State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.18 Subcontractor** “Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.19 Work** “Work” means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor’s obligations and duties under the Contract in conformance with the Contract and applicable laws.

2.0 Contract Interpretation

2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;



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2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) *[Definitions]*. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) *[Definitions]*. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*” in every instance;
5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
 - (1) Special Terms and Conditions;
 - (2) Exhibits to the Special Terms and Conditions;
 - (3) Uniform Terms and Conditions;
 - (4) Scope of Work;
 - (5) Exhibits to the Scope of Work;
 - (6) Pricing Document;
 - (7) Exhibits to the Pricing Document;
 - (8) Specifications; and
 - (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was



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subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3 Independent Contractor

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4 Complete Integration

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

3.1 Term of Contract

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless cancelled, terminated, or permissibly extended.**

3.2 Contract Extensions

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

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3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.



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In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

- 3.6.1 **RETAIN RECORDS.** By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.
- 3.6.2 **RIGHT TO AUDIT.** The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.
- 3.6.3 **AUDITING.** Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9 Ownership of Intellectual Property

- 3.9.1 **RIGHTS IN WORK PRODUCT.** All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- (a) "Government Purpose Rights" are:



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- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
 - ii. the right to release or disclose that work product to third parties for any State government purpose; and
 - iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
- (b) "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.
- 3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
- 3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
 - (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
 - (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
 - (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.
- 3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.
- 3.10 Subcontracts**
 - 3.10.1 INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
 - 3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.
 - 3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it



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will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11 Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12 Orders

- 3.12.1 **ORDER SUFFICIENCY.** The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.
- 3.12.2 **ORDER TERMS.** All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.
- 3.12.3 **ORDERS ARE OBLIGATORY.** Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.
- 3.12.4 **SPECIAL CASE.** In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.
- 3.12.5 **NO MINIMUMS OR COMMITMENTS.** (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.
- 3.12.6 **NON-CONTRACTED MATERIALS OR SERVICES.** Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13 Provisions for Statewide Contracts: - Eligible Agencies

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

Eligible Agencies – Orders

Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:



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- (d) "Approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or,
- (e) "Rejecting" the Order electronically in The State's e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 (Orders are Obligatory).

Unless and until Contractor has approved the Order in the State's e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically In The State's e-Procurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.

3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on



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State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

- 3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 *[Right of Offset]*.

4.0 Costs and Payments

4.1 Payments

- 4.1.1 PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
- 4.1.2 PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

- 4.2.1 CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.
- 4.2.2 TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5.0 Contract Changes

5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.



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5.2 Assignment and Delegation

- 5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.
- 5.2.2 IN PART. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6.0 Risk and Liability

6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

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

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

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

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.



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- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 2,000,000
Annual Aggregate	\$ 2,000,000

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

5. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

- 1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the



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Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E

2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

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

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

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

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

Each insurance policy required by this Contract must be in effect at, or prior to , commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

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

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

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

6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys'



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

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had



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effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

- 6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.
- 6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

**6.6 Third Party
Antitrust
Violations**

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7.0 Warranties

**7.1 Conformity to
Requirements**

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 3 (three) years/36,000 miles or as per OEM warranties after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

**7.2 Contractor
Personnel**

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

**7.3 Intellectual
Property**

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4 Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

**7.5 Operational
Continuity**

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.

**7.6 Performance in Public
Health Emergency**

- Contractor warrants that it will:
1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance



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- responses in the event of sudden and significant decrease in workforce; and
(c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7 Lobbying

7.7.1 PROHIBITION.

(a) Contractor warrants that:

- i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
- ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

(b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.

(c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8 Survival of Warranties

All representations and warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

9.0 Contract Termination

No modifications to uniform terms and conditions section

10.0 Contract Claims

10.1 Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2 Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11.0 General Provisions for Materials

11.1 Applicability

Article 11 applies to the extent the Work is or includes Materials.



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11.2 Off-Contract Materials

Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3 Compensation for Late Deliveries

Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, if applicable, that are likely to need them. Offeror shall provide proposed remedies on Attachment 3A.

11.4 Indicate Shipping Costs on Order

Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)

11.5 Current Products

Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract

11.6 Maintain Comprehensive Selection

Contractor shall provide at all times the comprehensive selection of products for which a price is established in the contract for ordering by Eligible Agencies, and Co-Op Buyers if applicable.

11.7 Additional Products

State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

11.8 Discounted Products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the



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products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.

Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

11.9 Forced Substitutes

11.11.1 PRICING. Unless stated otherwise in the contract, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#)

11.10 Recalls

11.11.2 LIABILITY. Unless stated otherwise in the contract or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the contract or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately

11.11 Delivery

Unless stated otherwise in the contract generally or in the applicable Order particularly, Contractor shall make delivery within 60 business days after receiving each Order. Notification shall be communicated to the agency when delivery timeline cannot be met.

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
 - i. Contractor shall deliver to any Eligible Agency Buyer anywhere in Arizona

11.12 Delivery Time

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each

11.13 Delivery Locations



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delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

11.14 Conditions at Delivery Location

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

11.15 Materials

3. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
4. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
5. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.16 Acceptance

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

11.17 Correcting Defects

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
 - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;

11.18 Returns



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Order Cancellations

- (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant

11.19 Product Safety

11.20 Hazardous Materials

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

12.0 General Provisions for Services

12.1 Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2 Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies.

12.3 Additional Services

State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4 Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and



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endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.

12.5 Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition, State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.7 Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8 Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.9 Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10 Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.



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1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13.0 Criminal History Records/Fingerprint Background Clearance and Drug Screening

13.1 Applicability

All proposed new, replacement and/or subcontract personnel designated to work "on site" shall be subject to background clearance. All administrative, processing, testing, travel, per diems and all other related costs shall be borne by the Contractor.

13.2 Background Checks

Personnel designated to work on site shall be subject to:

- A DPS and/or alternate law enforcement agency criminal history records clearance review;
- A DPS and/or alternate law enforcement agency fingerprint clearance review;
- A DPS initiated drug screen/testing and clearance review

13.3 Documents required

All proposed on-site Contract personnel and/or subcontract personnel shall:

- Complete and submit a DPS confidential background/drug screening questionnaire/affidavit form;
- Produce picture identification, such as a current state-issued driver's license to validate the individual's identity (required at time of fingerprinting/drug screening);
- Be subject to being fingerprinted
- Be subject to drug screening

13.4 Determination of eligibility to work

Upon review of individual results, DPS shall issue either an "Eligible to Work" or "Not Eligible to Work" determination to the Contractor and Contract Coordinator for that individual. Examples of areas that may result in "not eligible to work" determinations are, but may not be limited to, certain:

- Felony convictions;
- Misdemeanor convictions (not including traffic or parking violations);
- Outstanding warrants (including traffic and parking violations);
- Current parole or probation statutes;
- Current law enforcement investigative statutes; and
- Driving history reports.

In accordance with state law, all information obtained by these services shall not be divulged to any individual, employer or unauthorized party. Contractor and Contract Coordinator shall only be advised of an individual's "Eligible to Work" or "Not Eligible to Work" status. Determinations shall be made on a case-by-case basis and shall be final. DPS Human Resource bureau will assist the Contractor with testing facility locations times. Although every effort will be made to minimize Contractor travel and processing times, no timeframes are expressed or implied. DPS may also, at its sole discretion, request additional annual and/or periodic clearance reviews of onsite Contract personnel. All associated costs shall be borne by the Contractor.

End of Section 2-C



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SECTION 2-D: Uniform Terms and Conditions

Version: 9 (7/1/2013)

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

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| 1.1 Attachment | "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer. |
| 1.2 Contract | "Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments. |
| 1.3 Contract Amendment | "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract. |
| 1.4 Contractor | "Contractor" means any Person who has a Contract with the State. |
| 1.5 Days | "Days" means calendar days unless otherwise specified. |
| 1.6 Exhibit | "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation. |
| 1.7 Gratuity | "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. |
| 1.8 Materials | "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space. |
| 1.9 Procurement Officer | "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract. |
| 1.10 Services | "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8. |
| 1.11 State | "State" means the State of Arizona and Department or Agency of the State that executes the Contract. |
| 1.12 State Fiscal Year | "State Fiscal Year" means the period beginning with July 1 and ending June 30. |
| 1.13 Subcontract | "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract. |

2.0 Contract Interpretation

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| 2.1 Arizona Law | The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised |
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- Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3.0 Contract Administration and Operation

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



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3.6 Advertising, Publishing and Promotion of Contract

stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph 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.

4.0 Costs and Payments

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.



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- 4.2 Delivery** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes**
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law
- 4.4 Availability of Funds for the Next State fiscal year** Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year** Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

5.0 Contract Changes

- 5.1 Amendments** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts** The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 Risk and Liability

- 6.1 Risk of Loss** The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification**
- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be



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indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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

6.3 Indemnification – Patent and Copyright

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

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; 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.

6.4.2. Force Majeure shall **not** include the following occurrences:

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

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

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

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

6.5 Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



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7.0 Warranties

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| 7.1 Liens | The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens. |
| 7.2 Quality | <p>Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:</p> <p>7.2.1. Of a quality to pass without objection in the trade under the Contract description;</p> <p>7.2.2. Fit for the intended purposes for which the materials are used;</p> <p>7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;</p> <p>7.2.4. Adequately contained, packaged and marked as the Contract may require; and</p> <p>7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.</p> |
| 7.3 Fitness | The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract. |
| 7.4 Inspection/Testing | The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State. |
| 7.5 Compliance with Laws | The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements. |
| 7.6 Survival of Rights and Obligations after Contract Expiration or Termination | <p>7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.</p> <p>7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.</p> |

8.0 State's Contractual Remedies

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| 8.1 Right to Assurance | If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract. |
| 8.2 Stop Work Order | <p>8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.</p> <p>8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.</p> |



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|-----------------------------------|--|
| 8.3 Non-exclusive Remedies | The rights and the remedies of the State under this Contract are not exclusive. |
| 8.4 Nonconforming Tender | Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it. |
| 8.5 Right of Offset | The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions. |

9.0 Contract Termination

- | | |
|---|---|
| 9.1 Cancellation for Conflict of Interests | Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511. |
| 9.2 Gratuities | The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor. |
| 9.3 Suspension or Debarment | The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State. |
| 9.4 Termination for Convenience | The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply. |
| 9.5 Termination for Default | 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor. |



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Solicitation No. **BPM002158**

Description: Law Enforcement Vehicle Upfitting Services and Parts Purchase

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

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

**9.6 Continuation of
Performance Through
Termination**

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

10.0 Contract Claims

10.1 Contract Claims

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

11.0 Arbitration

11.1 Arbitration

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

12.0 Comments Welcome

12.1 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 400, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

	Request for Proposal Solicitation No. BPM002158 Law Enforcement Vehicle Upfitting Services and Parts Purchase	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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Attachment 4
Pricing Sheet

Pricing must be shown on Attachment 4 Price Sheet Below

In APP, you must complete at least one (1) Optional Line Item, enter \$1.00 in the Items (F) tab in order for your Offer to be considered, then upload required attachments.

Definition: "Established catalog price" means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer, distributor or contractor.
- (b) Is either published or otherwise available for inspection by customers.
- (c) 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.
- **Vehicle utilized for Item Group 1 Price Evaluation: 2019 Chevrolet Tahoe 4WD, VIN # 1GNSKDEC7KR297674**
- **The brand names and part numbers specified in this item group shall be used for evaluation purposes. Alternate brand names/part numbers offered shall not be considered for evaluation.**

Line Item	MFG	Part Number	Description	Established Catalog Unit Price (qty. 1)	Discount Percent Off Catalog	Net Price (catalog less discount)
1	Federal Signal	VALR51S-DPS-KI	AZDPS Specifications Low-profile, LED "V"-shape, 1 - HKB-LPCHGR11 1 - SSP3000B 2 - ES100C 2 - ESB-U Package Includes: VALR44S, SSP3000, 2x ES100 & 2x ESB-U	\$ <u>7,221</u>	<u>57</u> %	\$ <u>3,067.41</u>
2	Sound Off Signals	ETHTAH0-07+	Triggers both headlight and taillight flashers on 2007 Tahoe	\$ <u>106</u>	<u>50</u> %	\$ <u>53</u>
3	Sound Off Signals	EL3SNB	3 Up Ultra Mini LED Blue. Uses AA-Soundoff-Mini-Brk PL 2013-01-01	\$ <u>94</u>	<u>50</u> %	\$ <u>47</u>
4	Sound Off Signals	EL3SNR	3 Up Ultra Mini LED RED. Uses AA-Soundoff-Mini-Brk PL 2013-01-01	\$ <u>94</u>	<u>50</u> %	\$ <u>47</u>
5	Sound Off Signals	EL3SNBRK2LPH	Dual Horizontal License Plate Bracket. PL 2013-01-01	\$ <u>18</u>	<u>50</u> %	\$ <u>9</u>
6	Federal Signal	MPS620U-BR	MicroPulse Ultra 6, dual color blue/red	\$ <u>169</u>	<u>30</u> %	\$ <u>118.30</u>
7	Mag Instruments Inc	RL1019	MAGLITE LED FLASHLIGHT W/ CHARGER	\$ <u>99.95</u>	<u>10</u> %	\$ <u>89.95</u>
8	Sound Off Signals	ECVDMLTAL00	SOUND OFF WHITE/RED ALL LED DOMELIGHT-UNIVERSAL	\$ <u>104</u>	<u>50</u> %	\$ <u>52</u>



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9	Sound Off Signals	ECVDMLTST4	Universal LED Interior Dome Light, (24) Bright White LED's	\$ <u>39.94</u>	<u>50</u> %	\$ <u>19.77</u>
10	Setina Manufacturing	BK2159TAH15	PB450L4 ALUM MPOWER PUSH BUMPER FOR 2015 TAHOE	\$ <u>999</u>	<u>10</u> %	\$ <u>899.10</u>
11	Troy Products	CC-F-TMC-79	CONSOLE 7" SLOPED 9" LEVEL	\$ <u>475</u>	<u>35</u> %	\$ <u>308.75</u>
12	Troy Products	AC-TH15-MNT	FLOOR PLATE KIT FOR 2015-* TAHOE/SILVERADO	\$ <u>0</u>	<u>0</u> %	\$ <u>0</u>
13	Troy Products	AC-PENPRTR-90	Pentax Printer Mount	\$ <u>288</u>	<u>35</u> %	\$ <u>187.20</u>
14	Troy Products	FP-MXTL2500	3" Face Plate for a remote Motorola APX7500, 05 Head	\$ <u>0</u>	<u>0</u> %	\$ <u>0</u>
15	Troy Products	FP-PLATINUM	Face Plate for Fed. Signal SSP3000 Siren Controller, 4"	\$ <u>0</u>	<u>0</u> %	\$ <u>0</u>
16	Troy Products	L3-AP1SET	DC outlet plug with black captured cap. PL 2012-01-01	\$ <u>12</u>	<u>30</u> %	\$ <u>8.40</u>
17	Troy Products	FP-BLNK3	Three (3) inch blank face plate.	\$ <u>0</u>	<u>0</u> %	\$ <u>0</u>
18	Troy Products	AC-SIDEARM-12	12" long side-mount arm rest on L bracket, ht. adj. PL 2012-01-01	\$ <u>126</u>	<u>35</u> %	\$ <u>81.90</u>
19	Troy Products	AC-MCM1	Mic Clip and Mounting Plate Assembly PL 2012-01-01	\$ <u>15</u>	<u>30</u> %	\$ <u>10.50</u>
20	Troy Products	AC-MIC-Z-FPI	Mic Clip with Slotted L Bracket and Clip	\$ <u>26</u>	<u>30</u> %	\$ <u>18.20</u>
21	Gamber Johnson	710-5906	Lower 5" tall mounting pole.	\$ <u>31.95</u>	<u>20</u> %	\$ <u>25.56</u>
22	Troy Products	TP-E-SL6-FS-SS	PRISONER PARTITION	\$ <u>566</u>	<u>35</u> %	\$ <u>362.90</u>
23	Troy Products	2-SAB-TH15	PARTITION INSTALL KIT FOR 15-* TAHOE	\$ <u>288</u>	<u>30</u> %	\$ <u>201.60</u>
24	Troy Products	KP-TH15BF-SS	LOWER EXT. PANEL FOR 15-* TAHOE	\$ <u>194</u>	<u>30</u> %	\$ <u>135.80</u>
25	Troy Products	PS-TH15-OS-R	REAR PART. W/ SEAT & OS SEAT BELTS	\$ <u>1811</u>	<u>30</u> %	\$ <u>1247.70</u>
26	Troy Products	AC-TH15-HATCH	REAR WINDOW SCREEN DIAMOND PUNCH FOR 2015-* TAHOE	\$ <u>157</u>	<u>30</u> %	\$ <u>109.90</u>
27	Troy Products	WG-TH15-DS-PS	STEEL WINDOW GUARDS FOR 15-* TAHOE	\$ <u>278</u>	<u>30</u> %	\$ <u>194.60</u>
28	Troy Products	DP-TH15-DS-PS	PRISONER DOOR PANELS FOR 15-* TAHOE	\$ <u>283</u>	<u>30</u> %	\$ <u>198.10</u>
29	B&B Enterprises	7010-3007	DPS Single AR gun rack w/Security guard, no butt cups or bas	\$ <u>394.25</u>	<u>20</u> %	\$ <u>315.40</u>
30	Patrol Power	01-0215	FULL PATROL POWER FOR 15+ TAHOE	\$ <u>840</u>	<u>40</u> %	\$ <u>504</u>
31	Grainger or similar	2150	SPST HD Toggle Switch, ON-OFF 50 Amp, 6-24 Volt 2 Screw Terminal	\$ <u>10</u>	<u>10</u> %	\$ <u>9</u>



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32	B&B Enterprises	BR0019	Master switch mounting bracket for DPS Ford F150	\$ <u>5.22</u>	<u>20</u> %	\$ <u>4.20</u>
33	Panorama	GP-IN2259-DPS-K	Panorama DPS kit for Motorola 8500 GPSB, C29F-6SJ, C74-FP-6-SMAP C74-FP-015-TS9S, C29F-5QMAP ASFC-155-U2-B1	\$ <u>351.71</u>	<u>15</u> %	\$ <u>298.95</u>
34	TESSCO or similar	NMOCAPB	LARSEN BLACK PLASTIC RAIN CAP FOR NMO MOUNT	\$ <u>7.84</u>	<u>3</u> %	\$ <u>7.42</u>
35	TESSCO or similar	NMOKHFUDFME	Twenty-Five Foot Radio Coax Cable Kit with FME	\$ <u>35.18</u>	<u>3</u> %	\$ <u>34.12</u>
36	Brother USA	LB3692	12V dc Pocket Jet Printer Power Adapter, 8ft with hardware	\$ <u>24.99</u>	<u>5</u> %	\$ <u>23.74</u>
37	CDW or similar	328953	2 Meter USB A to Mini B 2.0 Cable for Printer	\$ <u>6.99</u>	<u>5</u> %	\$ <u>6.64</u>
38	TREMCO Police Products	TREMCO- SILBER	Anti-Theft Device for a 2011+ Chevy Silverado	\$ <u>170</u>	<u>20</u> %	\$ <u>134</u>
39	TREMCO Police Products	BR0021	Bracket used for Tremco Mount	\$ <u>13.90</u>	<u>20</u> %	\$ <u>11.20</u>
40	B&B Enterprises	225-2402-d	2 Drawer Box 44" x 34" x 23" tall includes 2" lip, bottom drawer is 6 1/2" deep with vented front that includes a f drawer is 11 1/2", to fit a standard Tahoe (2015+included, T-handle locks, Aluminum shell construction drawers. 2" lip on sides and rear of box only. T-Handle	\$ <u>3,995</u>	<u>25</u> %	\$ <u>2,996.25</u>
41	Troy Products	AC-INBHG	Internal Beverage Holder with rudder pieces priced with	\$ <u>52</u>	<u>30</u> %	\$ <u>36.40</u>
42	Troy Products	FP-TH15-USB-3D	Relocation FP USB with 3 DC outlets	\$ <u>Ø</u>	<u>Ø</u> %	\$ <u>Ø</u>
43	Add line items 1 through 42 from Item Group 1 for total net amounts					\$ <u>12,137.34</u>
44	Business Labor Rate Per Hour Offered					\$ <u>45</u> /hr
45	Total hours to complete up-fitting installation services of line items 1 - 42 on 2019 Chevrolet Tahoe					<u>49</u> hrs
46	Multiply lines 44 and 45					\$ <u>3,185</u>
47	Subtotal Amount – Price Sheet Item Group 1 (add lines 45 and 46) <i>Lines 43 & 46 Calculated</i>					\$ <u>15,322.34</u>

	Request for Proposal Solicitation No. BPM002158 Law Enforcement Vehicle Upfitting Services and Parts Purchase	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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ITEM GROUP 2:

Definition: "Established catalog price" means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer, distributor or contractor.
- (b) Is either published or otherwise available for inspection by customers.
- (c) 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.
- **9999999 Vehicle utilized for Item Group 2 Price Evaluation: 2019 Chevrolet Tahoe 4WD, VIN #1GNSKAKC8KR153571**
- **The Brand names and part numbers specified in this item group shall be used for evaluation purposes. Alternate brand names/part numbers offered shall not be considered.**

Line Item	MFG	Part Number	Description	Established Catalog Unit Price (qty. 1)	Discount Percent Off Catalog	Net Price (catalog less discount)
1	Soundoff Signal	ETHFSS-SP	"Select-A-Pattern Headlight Flasher, Solid State w/ 18" wire leads (compatible w/ 2016+ Ford PI Utility) 9.5 amp"	\$ 70	50 %	\$ 35
2	Federal Signal	MPS1220U-BW	Micropulse 1200 Ultra Dual Color. Blue / Clear	\$ 199	30 %	\$ 139. ³⁰
3	Federal Signal	MPS1220U-RW	24-LED Lighthouse Red/White	\$ 199	30 %	\$ 139. ³⁰
4	Federal Signal	SIFZP-1490218198	SpectraLux® ILS Low-Profile, RW, BW, RW, BW.	\$ 934	57 %	\$ 401. ⁴²
5	Federal Signal	HHS4200	New! Same as HHS3200, Except with WeCan® Port that Supports the Inner Edge® FST™ and RST™ Series, WeCan® Lightbars, or WeCan® External Amplifier (Not for Use with the CANEM16 Expansion Module).	\$ 699	30 %	\$ 489. ³⁰
6	Grainger or similar	73265	Chrome-Plated Handle Toggle Switch. 3 position.	\$ 12	10 %	\$ 10. ⁸⁰
7	TREMCO Police Products	TREMCO-TAHOE-15	Tremco Police Products Anti-Theft System. Shift Lock.	\$ 170	20 %	\$ 136
8	Mag Instruments Inc	RL1019	MAGCHARGER LED Rechargeable System. 12v adapter, and 120v converter.	\$ 99. ⁹⁵	10 %	\$ 89. ⁹⁵
9	Streamlight Inc	75832	Stinger DS (Dual Switch) LED 120V AC/12V DC with PiggyBack Charger	\$ 200. ⁷⁷	30 %	\$ 140. ⁵³
10	B&B Enterprises	7010-2027	Trunk Mounted gun lock for AR. Impala	\$ 492	20 %	\$ 393. ⁴⁰
11	Sti-Co Industries, Inc	RDCA-SB-VHF	STI-CO Covert Interior Rear Window Deck Antenna. 150-174 MHz, Unity gain with 17' RG58 cable. No connector supplied.	\$ 329	5 %	\$ 312. ⁵⁵



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12	Sti-Co Industries, Inc	CCAS-SB-7-800	Sti-Co Stinger, Internal Peel & Stick Antenna in 760-896MHZ, BW 136MHZ.	\$ <u>100</u>	<u>5</u> %	\$ <u>95</u>
13	Motorola Solutions	EQ000103A02	Motorola Multiplexer.	\$ <u>199</u>	<u>3</u> %	\$ <u>193.⁰³</u>
14	Panorama	EF-460-3F	Easy fit UHV, Antenna.	\$ <u>39.⁰⁴</u>	<u>15</u> %	\$ <u>33.18</u>
15	Tessco or similar	315600	Amphenol RF QMA Male Crimp Connector RG58 LMR195 Cables (930-120P-51S)	\$ <u>19.37</u>	<u>3</u> %	\$ <u>18.78</u>
16	Tessco or similar	90942	NMO Mount with no connector.	\$ <u>22.⁴³</u>	<u>3</u> %	\$ <u>21.⁹⁵</u>
17	B&B Enterprises	225-2059-15	1-Drawer Box - 44"W x 29"D x 16 1/2"T / Includes: 2" Lip Around Top, Heavy Duty Glides, Stainless Steel T-Handle Locks, Support Rails For Install - Fully Powder coated (Tahoe 2015+)	\$ <u>1945</u>	<u>20</u> %	\$ <u>1556</u>
18	Soundoff Signal	ETFBSSN-P	Flashback Alternating Taillight Flasher, Solid State - 2.4 f.p.s.	\$ <u>77</u>	<u>50</u> %	\$ <u>38.50</u>
19	911 Circuits Petrol Power	CH8.120 MICRO I	8 Circuits, Four 10 gauge outputs and Four 16 gauge outputs. Timed or Hot. 120 AMP Circuit breaker. 20' harness. - Universal mini	\$ <u>590</u>	<u>40</u> %	\$ <u>354</u>
20	Add line items 1 through 19 from Item Group 2 for total net amounts					\$ <u>4,598.³⁹</u>
21	Business Labor Rate Per Hour Offered					\$ <u>65</u>
22	Total hours to complete up-fitting installation services of line items 1 - 19 on 2019 Chevrolet Tahoe					<u>40.5</u> hrs
23	Multiply lines 21 and 22					\$ <u>2,632.⁵⁰</u>
24	Subtotal Amount - Price Sheet Item Group 1 (add lines 20 and 23)					\$ <u>7,230.⁸⁹</u>

ITEM GROUP 3 Pricing

Actual Purchases made during the Contract terms shall be per Terms, Conditions, Scope of Work/Specifications and pricing awarded.

Line Item	Description	Price
1	All inclusive fixed labor rate per hour for contractor provided on-site services at DPS Fleet facility.	\$ <u>85</u> Per Hour



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ITEM GROUP 4:

Provide a discount percent off established catalog price that is equal to the discount % off of the equipment specified on the evaluation vehicles for the same product manufacturer (information purposes only). Check column 4 if unable to supply manufacturers listed.

Manufacturer	Manufacturer's Catalog Name/No./Date	% Discount Offered	Check if unable to supply
Federal Signal (Red / Blue)	Fedsig.com	30	
Code 3 (Red / Blue)	Code3esg.com	35	
Sound Off Signal (Red / Blue)	SoundOffSignal.com	50	
Whelen Engineering (Red / Blue)	Whelen.com	30	
Maglite	maglite.com	10	
Streamlight	Vendor List	30	
Tremco	Verbal	10	
Laird	Vendor list	30	
Larsen	Vendor list	3	
Leer	Verbal	0	
B & B Enterprises	Vendor List	20	
Setina	Setina.com	10	
Troy	Troyproducts.com	30	
Jotto Desk	Galotto.com	0	
Patrol Power	Vendor List	40	
Terminal Supply Company	TerminalSupplyCo.com	0	
Brother Mobile Solutions	Verbal	5	
Plastifab	Verbal	5	
Pro Gard	Pro-gard.com	20	
American Aluminum	Verbal	5	
Havis	Havis.com	25	
Gamber Johnson	GamberJohnson.com	30	
Cole Hersey	Verbal	0	
Lind	LindElectronics.com	20	
Mouser Electronics	mouser.com	0	
Watchguard Video	Verbal	5	

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ITEM GROUP 5:

Provide a discount percent off established catalog price from other manufacturers for DPS purchases on an as needed basis (information only). Check column 4 if unable to supply manufacturers listed.

Manufacturer	Manufacturer's Catalog Name/No./Date	% Discount	Check if unable to supply
Laser Technology			✓
Kustom Signal			
Stalker			
Decatur			
L-3 Mobile Video			✓
Martel Video			✓
Panasonic Video			✓
Tomar (Red/Blue)	Tomar.com	20	
Federal Signal Amber	Fedsig.com	30	
Whelen Amber	Whelen.com	30	
Code 3 (PSE Amber)	Code3esg.com	35	
Rigid Industries	Rigidindustries.com	10	
Show Me	Able2products.com	10	
Pelican	Pelican.com	5	
Premier Mounting Solutions	Vendor List	20	
PCTEL			✓
Motorola			✓
Kenwood	Verbal	0	
U.S. Communications			✓
Sti-Co	Verbal	0	
Tessco	Tessco.com	3	
PVP Communications			✓
Panorama	Vendor	15	
Whyte Technical Sales		0	
Copeland Engineering	Vendor	10	
911 Ciruits			✓



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Power Guardian			✓
Grote		Ø	
Edison		Ø	
Dillblox		Ø	
Radiotronic	Price List	5	
Aimes (Power Inverters)	Verbal	Ø	
Lund	Verbal	Ø	
Weatherguard	Verbal	Ø	
Highway Products Bed Inserts	Verbal	5	
ARE Camper Shells	Verbal	Ø	
Knaphide Service Bodies			✓
Truck Vault	Verbal	10	
Laser Technology			✓
Big Sky Racks	Bigsky.com	5	
Tuffy Security Products	Verbal	5	
Ray Allen (K-9 Equipment)	Vendor	Ø	
Patriot			✓
Laguna	Verbal	Ø	
PTS - Prisoner Transport Solutions	Verbal	5	
Ram Mounts	Vendor	10	
Viper (Alarms)	Verbal	15	

End of Attachment 4



ARIZONA DEPARTMENT OF PUBLIC SAFETY CONTRACT AMENDMENT

P. O. Box 6638
Phoenix, Arizona 85005

CONTRACT NO. CTR049796
TITLE: Law Enforcement Vehicle Upfitting
CONTRACTOR: Arizona Emergency Products

In accordance with the Special Terms and Conditions, Contract Extensions, contract CTR049796 is hereby extended through May 18, 2022.

All other terms, conditions, specifications to remain unchanged.

ACKNOWLEDGEMENT AND AUTHORIZATION: This change order shall be fully executed upon the approval electronically in the Arizona Procurement Portal (APP) by an authorized representative of the Contractor and applied to the contract in APP by the Procurement Officer or delegate.



ARIZONA DEPARTMENT OF PUBLIC SAFETY CONTRACT AMENDMENT

P. O. Box 6638
Phoenix, Arizona 85005

CONTRACT NO. CTR049796
TITLE: Law Enforcement Vehicle Upfitting Services
CONTRACTOR: Arizona Emergency Products Inc

In accordance with the Special Terms and Conditions, Contract Extensions, contract CTR049796 is hereby extended through May 18, 2023.

All other terms, conditions, specifications to remain unchanged.

ACKNOWLEDGEMENT AND AUTHORIZATION: This change order shall be fully executed upon the approval electronically in the Arizona Procurement Portal (APP) by an authorized representative of the Contractor and applied to the contract in APP by the Procurement Officer or delegate.

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ARIZONA EMERGENCY PRODUCTS, INC.

[Quote]

See following pages.



Quotation

Date	Page
Jul 6, 2022	1
Order Number	
QTE0032978	

Arizona Emergency Products

3433 E Wood St
Phoenix, AZ 85040
Phone: (602) 453-9111
Fax: (602) 453-3743

Sold To:

Chino Valley Police Department
1950 Voss Dr
Chino Valley, AZ 86323

Ship To:

AEP PHX INSTALL
AEP PX INSTALL

Reference	PO Number	Customer No.	Salesperson	Order Date	Ship Via	Terms
2023 PI-SUV / Full Patrol Upfitting /		CHI10603	BPY	Jul 6, 2022		NET30

Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number		Description	Unit Price	Tax	Extended Price
			POC: Matt Green / 928-636-4223 / Chino Valley PD POC: Lt. Chapman / 928-636-4223 / Chino Valley PD Order PI-SUV with Ford Option 86T, and 17T UPDATED August 4th, 2022 with Whelen August Price Increases ** Whelen CORE Upfitting ***			
1.00	LBAR03637	/ EB8DEDE-BUNDL	48 " Legacy WeCanX DUO LED Light Bar CORE Bundle Special CORE Bundle Package Pricing	3,146.8500	Y	3,146.85
1.00	LBAR03388	/ MKAJ105	'Whelen 48" Light Bar Mounting Bracket / PI-SUV Included with Special CORE Bundle Package Pricing	0.0000	N	0.00
1.00	SIRE00580	/ C399	Whelen Cencom Core WeCanX Siren Amp Included with Special CORE Bundle Package Pricing	0.0000	N	0.00
1.00	INST05730	/ C399K4	Whelen CANport OBDII Interface Included with Special CORE Bundle Package Pricing	0.0000	N	0.00
1.00	VACC02448	/ CCTL7	Siren / Light Controller 21 Push Button, 4 Position Slide Included with Special CORE Bundle Package Pricing	0.0000	N	0.00

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Arizona Emergency Products

3433 E Wood St
Phoenix, AZ 85040

Phone: (602) 453-9111

Fax: (602) 453-3743

Sold To:

Chino Valley Police Department
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Chino Valley, AZ 86323

Ship To:

AEP PHX INSTALL
AEP PX INSTALL

Reference	PO Number	Customer No.	Salesperson	Order Date	Ship Via	Terms
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Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
1.00	SIRE00607 / CCTL5	Hand Held Combination Microphone and Light / Siren Controler Contract price of 30% off Whelen MSRP of \$449.00	314.3000	Y	314.30
1.00	INST05728 / CCTLHARN	CORE Control Head Harness Kit, for Non-Primary Control Head Contract price of 30% off Whelen MSRP of \$9.00	6.3000	Y	6.30
2.00	VACC02449 / CEM16	16 Output, 4 Input WeCanX Expansion Module Contract price of 30% off Whelen MSRP of \$277.00	193.9000	Y	387.80
1.00	VACC02426 / CV2V	CORE System Sync Module Contract price of 30% off Whelen MSRP of \$352.00	246.4000	Y	246.40
1.00	BUMP00938 / BK2017ITU20	Lighted Push Bumper / Two Forward Whelen Tri-Color Lights Contract price of 10% off Setina MSRP of \$889.00	800.1000	Y	800.10
1.00	LEDS02895 / LINSV2R	LIN2V Under Mirror Light / Red Contract price of 30% off Whelen MSRP of \$293.00	205.1000	Y	205.10
1.00	LEDS02956 / LINSV2B	LIN2V Under Mirror Light / Blue Contract price of 30% off Whelen MSRP of \$293.00	205.1000	Y	205.10
1.00	BKRT00099 / LSVBKT50	Under Mirror Mounting Kit for LINSV2 Lights / 20+ PI-SUV Contract price of 30% off Whelen MSRP of \$33.00	23.1000	Y	23.10

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Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
2.00	LEDS02913 / I3JC	ION TRIO Red / Blue / White with White Override / Black Hous Contract price of 30% off Whelen MSRP of \$243.00	170.1000	Y	340.20
1.00	BKRT00231 / IONBKT8	Rear Hatch Brackets (pair) for 2020-2022 Ford Police Interce Contract price of 30% off Whelen MSRP of \$37.00	23.8000	Y	23.80
2.00	LEDS03585 / TLI2J	ION T-Series LED Light Head / DUO Red - Blue Contract price of 30% off Whelen MSRP of \$189.00	121.1000	Y	242.20
2.00	LEDS04265 / VTX9J	Vertex Super-LED DUO Lighthouse Red/Blue Contract price of 30% off Whelen MSRP of \$142.00	99.4000	Y	198.80
2.00	SPEA00062 / SA315P	100 Watt Siren Speaker, Nylon Composite PL-2014-01-01 Special Siren Speaker Bundle Package Pricing	184.9500	Y	369.90
2.00	LBAR01652 / SAK1	Heavy-Duty Universal L Mounting Bracket PL-2014-01-01 Included with Special Siren Speaker Bundle Package Pricing	0.0000	N	0.00
1.00	CONS01662 / C-VS-1210-INUT	Havis Console for 2020+ PI-SUV High Angle Mid-Height Contract price of 25% off Havis MSRP of \$426.42	319.8200	Y	319.82
1.00	FACE00186 / C-FP-2	Havis 2" Blank Faceplate.	0.0000	N	0.00

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Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
		Included with price of console			
1.00	FACE00216 / C-EB25-XTL-1P	Havis 2.5" Faceplate for Motorola Radio XTL2500. Included with price of console	0.0000	N	0.00
1.00	FACE00502 / C-EB40-SSP-1P	Havis 4" Faceplate for Federal Signal Pathfinder Control Hea PB 2012-09-01 Included with price of console	0.0000	N	0.00
1.00	FACE00231 / C-PS-1	Havis 1.5" Faceplate with 2 Horizontal Switch Cutouts Included with price of console	0.0000	N	0.00
1.00	FACE00221 / C-SW-1	Havis SPST 20 Amp Rocker Switch with Red Indicator Light PB 2012-09-01 Contract price of 25% off Havis MSRP of \$22.72	17.0400	Y	17.04
1.00	FACE00186 / C-FP-2	Havis 2" Blank Faceplate. Included with price of console	0.0000	N	0.00
1.00	CONS01632 / C-USB-2	Dual USB Charge Module Contract price of 25% off Havis MSRP of \$79.11	59.3300	Y	59.33
1.00	CONS00325 / C-AP-0325	Havis 3" High Accessory Pocket PB 2012-09-01 Contract price of 25% off Havis MSRP of \$51.00	38.2500	Y	38.25

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2023 PI-SUV / Full Patrol Upfitting /		CHI10603	BPY	Jul 6, 2022		NET30

Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
1.00	CONS01623 / CUP2-1001	Self-Adjusting Dual Cup Holder Contract price of 25% off Havis MSRP of \$65.09	48.8200	Y	48.82
1.00	FACE00211 / C-FP-3	Havis 3" Blank Faceplate. PB 2012-09-01 Included with price of console	0.0000	N	0.00
2.00	CONS00357 / C-MCB	Havis Mic Clip Bracket PB 2012-09-01 Contract price of 25% off Havis MSRP of \$18.17	13.6300	Y	27.26
2.00	CONS01276 / MMBP-25	Magnetic Microphone Mount BP Not on contract / Open market price / MSRP \$34.99	29.9900	Y	59.98
1.00	CONS00396 / C-ARM-102	Havis Console Side Mount Adjustable Armrest PB 2012-09-01 Contract price of 25% off Havis MSRP of \$82.09	61.6700	Y	61.67
1.00	COMP00157 / C-HDM-204	Havis Pole only, Telescoping Device Mounting Base, Heavy Dut PB 2012-09-01 Contract price of 25% off Havis MSRP of \$191.91	143.9300	Y	143.93
1.00	COMP01816 / PKG-KB-208	Havis Rugged Keyboard with Integrated Touchpad and Keyboard Contract price of 25% off Havis MSRP of \$627.45	470.5900	Y	470.59

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Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
1.00	COMP01922 / C-MD-317	Computer Monitor / Keyboard Mount and Motion Device Contract price of 25% off Havis MSRP of \$474.48	355.8600	Y	355.86
1.00	INST05526 / Parts	R11 DuraBook Expanded Vehicle Dock with Dual RF Pass-Through Not on contract / Open market price / MSRP \$ 749.00	688.8500	Y	688.85
1.00	INST05526 / Parts	Lind Power Adapter 12-32 VDC / Bare Wire Not on contract / Open market price / MSRP \$144.95	141.6900	Y	141.69
1.00	INST05526 / Parts	DuraBook R-11 Tablet as per Chino Valley PD Specs Not on contract / Open market price / MSRP \$ 2,249.00	1,965.3500	Y	1,965.35
1.00	INST05526 / Parts	DuraBook R-11 X Strap Not on contract / Open market price / MSRP \$ 80.00	73.6000	Y	73.60
1.00	INST05526 / Parts	Durabook 3 Years Accidental Damage Protection Upgrade Not on contract / Open market price / MSRP \$ 499.00	228.8500	Y	228.85
1.00	GUNM00726 / GVPMD-H	Partition Mounted Tri-Lock Gun Rack w/ Handcuff Key Contract price of 30% off Pro-Gard MSRP of \$628.00	471.0000	Y	471.00
1.00	PRIS01631 / TP-E-SL6-US-SS	Partition, Recessed, Sliding Window, Square Hole Screen Contract price of 30% off Troy Products MSRP \$964.00	674.8000	Y	674.80
1.00	PRIS02006 / SAB-20-FDUV-BB	Big Boy Partition Mounting Kit / 20+ PI-SUV	242.9000	Y	242.90

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Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number		Description	Unit Price	Tax	Extended Price
			Contract price of 30% off Troy Products MSRP \$347.00			
1.00	VACC02102	/ KP-UV20-DAP-SS	3-pc Kick Panel with Foot Pockets / 20+ PI-SUV Contract price of 30% off Troy Products MSRP \$208.00	145.6000	Y	145.60
1.00	PRIS02103	/ WG-20-FDUV-SET	Window Bars Vertical Steel / 20+ PI-SUV Contract price of 30% off Troy Products MSRP \$312.00	218.4000	Y	218.40
1.00	PRIS02036	/ FRD200001-0	Latch/Window Switch BlockOff Kit, Rear Doors, 20+ PI Utility Contract price of 35% off Patrol Power MSRP of \$69.00	44.8500	Y	44.85
1.00	PRIS02247	/ PS-20-UVFX-OS-F	Plastic Seat with OS Belts Poly Rear Partition / 20+ PI-SUV Contract price of 30% off Troy Products MSRP \$2,182.00	1,527.4000	Y	1,527.40
1.00	DOME00023	/ ECVDMLTST4	Universal LED Interior Dome Light, (24) Bright White LED's, Contract price of 50% off Sound Off MSRP of \$53.00	26.5000	Y	26.50
1.00	PRIS02051	/ AC-20-UV-CGP2	Rear Cage Airbag Corridor Gap Panels / 20+ PI-SUV Contract price of 30% off Troy Products MSRP \$135.00	94.5000	Y	94.50
1.00	STOR00827	/ PDU-12.5-42-18-0	OPS Pursuit Cargo Drawer Unit 12.5" H x 42" W x 18" L Not on contract / Open market price	841.1000	Y	841.10
1.00	BKRT00085	/ PDU-FIU-8-BR202	OPS Pursuit Box 8" Brackets Brackets for 2020+ PI-SUV	180.7000	Y	180.70

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Year	Make	Model	Color	State Contract #
2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number		Description	Unit Price	Tax	Extended Price
			Not on contract / Open market price			
3.00	ANTE01006	/ ANXMB8U25	Twenty-Five (25) Foot Radio Coax Cable Kit with No Connector Contract price of 40% off Talley MSRP of \$25.65	15.3900	Y	46.17
1.00	ANTE00298	/ GPSU15M	Low Pro NMO Mount GPS Antenna Black Contract price of 40% off Talley MSRP of \$113.23	79.9400	Y	79.94
1.00	ANTE00932	/ MXRBMLPVM/LT	Low Pro 698 – 2700 MHz Cellular NMO Antenna Contract price of 40% off Talley MSRP of \$65.65	39.3900	Y	39.39
1.00	ANTE00056	/ NMOCAPB	Black Plastic Rain Cap for NMO Mount Contract price of 40% off Talley MSRP of \$9.19	5.5100	Y	5.51
1.00	VACC02429	/ SI240T-IH	Secure Idle for 2016 + Ford Police Interceptor SUV Not on contract / Open market price	154.5800	Y	154.58
1.00	VACC00885	/ Graphics	Graphics Kit / Per Chino Valley PD Specs Not on contract / Open market price	639.5200	Y	639.52
1.00	VACC00103	/ Graphics Installatic	Installation of Graphic Material Not on contract / Open market price	399.0000	Y	399.00
1.00	TINT90001	/ Window Tint	All Window Tinting / Front Doors 35% - All Rear 5% Not on contract / Open market price	225.0000	N	225.00
1.00	PATC00257	/ EX0011	PP - GEN1 - 2020 FORD UTILITY UNDERHOOD	589.5500	Y	589.55

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2023	Ford	PI-SUV		CTR049796

Qty. Ord.	Item / Vendor Part Number	Description	Unit Price	Tax	Extended Price
		Contract price of 35% off Patrol Power MSRP of \$907.00			
60.00	LABO90001 / AEP INSTALL	Labor Charges to Install All Above Emergency Equipment EVT-Certified Technician Labor	65.0000	N	3,900.00
10.00	LABO90001 / AEP INSTALL	One Time Labor Charge to Program the Pathfinder System EVT-Certified Technician Labor	65.0000	N	650.00
1.00	INST05440 / AEP-Misc	Shop Supplies	125.0000	Y	125.00
		Shipping		N	750.00
		*** Customer Supplied Equipment ***			
1.00	INST05685 / CSM	Motorola Mobile Radio	0.0000	N	0.00
1.00	INST05685 / CSM	Motorola External Radio Speaker	0.0000	N	0.00
1.00	INST05685 / CSM	Motorola Roof Mount Antenna	0.0000	N	0.00

Thank you for the opportunity to earn your business			Parts	17,982.25
Terms & Conditions:			Labor / Services	4,550.00
• ESTIMATES VALID FOR 30 DAYS			Trans / Trip / Fee	0.00
• Orders will be invoiced upon notification of completion			Shipping	750.00
• Returns subject to 25% restocking fee. No returns on special order items.			Order Discount	0.00
• Credit Card payments accepted for payments of orders/invoicing totaling \$10,000 or less only.			Subtotal	23,282.25
SIGNATURE (not required if PO/contract is issued) _____			Total sales tax	1,527.13
			Total order	24,809.38