

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
GRUBER TECHNICAL, INC.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 14 day of January, 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Gruber Technical, Inc., an Arizona corporation ("Contractor"), collectively, the "Parties."

RECITALS

- A. On August 14, 2012, under the State of Arizona Cooperative Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the agreement ADSP013-030061 ("Cooperative Purchasing Agreement"), which is attached as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

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

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet (which is attached as Exhibit B), purchases can be made by governmental entities from the date of award, which was August 14, 2012, until the date the contract expires on July 15, 2017 .
2. Scope of Work; Terms, Conditions, and Specifications.

A. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

A. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed fourteen thousand dollars (\$14,000) annually or twenty-eight thousand dollars (\$28,000) for the entire term of the Agreement.

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale

and

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

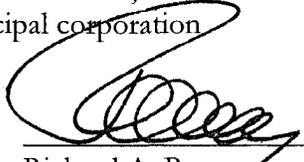
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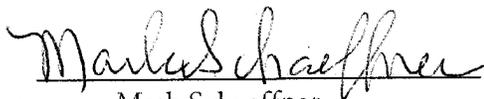
City of Glendale, an Arizona
municipal corporation

Gruber Technical, Inc.,
an Arizona Corporation

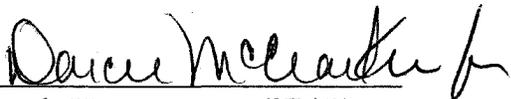
By:


Richard A. Bowers
(Acting) City Manager

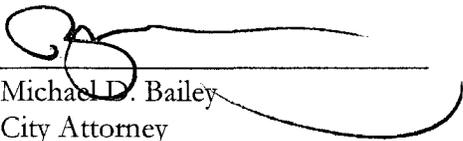
By:


Name: Mark Schaeffner
Title: Vice President/CFO

ATTEST:


Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
GRUBER TECHNICAL, INC.**

EXHIBIT A



Offer and Acceptance

SOLICITATION NO.: ADSP012-00001699

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TITLE: Uninterruptible Power Supply;
New Equipment, Service and Maintenance

OF
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State of Arizona
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.:

Federal Employer Identification No.:
861001733 860505466

E-mail: kor@gruber.com

Phone: 602-863-2655

Fax: 602-257-4313

Gruber Technical Inc. dba Gruber Power Services

Company Name

21439 North 2 nd Avenue

Address

Phoenix

AZ

85027

City

State

Zip

Signature of Person Authorized to Sign Offer

Stephen Korf

Printed Name

Chief Financial Officer, V.P.

Title

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization IS/ IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.
5. In accordance with A.R.S. §§ 35-393, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Iran.
6. In accordance with A.R.S. §§ 35-391, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

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

This Contract shall henceforth be referred to as Contract No.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona
Awarded this

16th day of July

20 12

Procurement Officer



Solicitation As Amended

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A. Purpose

The State of Arizona, its Agencies, Boards and Commissions (State) as well as Participating Members of the State Purchasing Cooperative (Cooperative), have an ongoing requirement for various Products and Services as described herein. The purpose of the Solicitation is to conduct a competitive process, in accordance with Arizona Revised Statutes (ARS) 41-2501 et seq., to create a Contract or Contract Set from which the State and its Cooperative Members may acquire these Products and Services.

B. Background

The State of Arizona has an ongoing need for full service and preventative maintenance to the uninterruptible power supply (UPS) systems used by various State agencies and its Cooperative Members. Additionally there are periodic needs for new equipment as well as replacement parts and engineering services. The UPS systems provide a source of backup in the case of a power outage. They are a piece of electrical equipment with internal batteries that offer a continuing source of power for a short period of time to any computer or electrical appliance that is plugged in to it. The constant flow of power is a key essential to many functions that State agencies and Cooperative Members operate with. Without power, dangerous circumstances may present themselves, so it is critical that these UPS systems are dependable and reliable.

C. Products and Services

The State desires to establish a Contract or Contract Set to cover both UPS equipment purchases and maintenance on existing UPS systems already in use by the State. The State acknowledges that the UPS industry and its suppliers are changing rapidly and as such desire to establish manufacturer-based contracts allowing flexibility to accommodate open-standards-based products and new technology.

The State intends to consider value-added-reseller, distributor, as well as manufacturer-direct proposals and may award multiple manufacturer offerings to a successful value-added-reseller and/or distributor. The State prefers to obtain vendors who represent multiple manufactures as well as vendors who represent manufactures that produce specialized products.

D. Scope of Products and Services

The Contractor shall provide UPS Products and Services under this contract which include:

1. Actual manufacturer's products, services, labor, materials, transportation, equipment and all other necessities for the installation, integration, and implementation, including engineering analysis, design and configuration, of the manufacturer's product or service.
2. Software and/or hardware maintenance of the manufacturer's product or service. Provide a detailed work plan/scope of work procedures for all major maintenance prior to commencing work. Procedures shall include back-up and contingency plans.
3. Ancillary services in conjunction with the implementation, or extension of a manufacturer's product.

E. Pricing Requirements

1. Offerors shall make available a complete family or line of business of a manufacturer's products at a "percentage discount off list pricing".
2. Offerors shall provide an hourly rate for hardware/software maintenance and an hourly "not to exceed rate" for equipment maintenance within a complete family or line of business of a manufacturer's products. The Offeror may bid solely on new equipment and the services that would correlate with new product purchases (including but not



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limited to design, installation, training, etc.) or they may bid solely on maintenance and services that would correspond with maintenance (including but not limited to maintenance, training etc.)

F. Contractor and Technician Requirements

1. Technicians under any resultant contract shall be trained on the manufacturer's product line, by the manufacturer or by any authorized trainer for that manufacturer of the product line that they will be working on. For example, if an Offeror is servicing an XYZ UPS system, they are required to be certified on XYZ equipment. This is to ensure that the State is receiving the highest utilization of their components.

G. Product Requirements

The following UPS products specifically included in this procurement are grouped into tiers as follows:

1. Tier I
250VA – 1500 VA
PC & Workstation UPS – single phase
Power protection solution for desktop computers;
2. Tier II
1500VA – 20kVA
Network & Server UPS – larger single phase
Power protection solutions designed for networking equipment including entry-level to high performance storage, switches and servers;
3. Tier III
10kVA – 100kVA
Small to Mid-Size Data Centers – small three phase
Power protection solutions designed for centralized protection of any data center and for complete building systems;
4. Tier IV
101kVA and larger
Mid-size to large data center and facility UPS large three phase.

H. Service Requirements

1. The services that may be offered in correlation with this solicitation are as follows:
 - 1.1 Design;
 - 1.2 Installation;
 - 1.3 Training; and
 - 1.4 Maintenance.
 - 1.4.1 Preventative,
 - 1.4.2 Emergency (by response time), and
 - 1.4.2.1 Quick, and
 - 1.4.2.2 Urgent.

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1.4.3 Legacy.

In addition to maintenance on new product purchases, the Contractor shall also offer maintenance on Legacy Products. Legacy Products are defined as any existing UPS equipment, and its associated supplies, that have been purchased or rented prior to the RFP issuance and resulting contract award.

2. Response Time to Requests for Service

2.1 Urgent Response

Zone A Site Centers

Phoenix – 100 N. 15th Ave., Phoenix, AZ 85007

Tucson – 255 W. Alameda St., Tucson, AZ 85701

Zone A requires initial response by phone within one hour of request for service. Physical representation on site is required within three hours of request for service by the State and/or Cooperative. This applies to sites located within the 40 mile radius from the site center, as detailed above. Contractor shall maintain a 24-hour call center to receive service calls and promptly dispatch maintenance technicians in response to callback requests and emergency troubleshooting and/or repair..

For distances traveled outside of the 40 mile radius from the addresses listed as the Zone Site Centers above, this solicitation allows one additional hour of physical response time for each additional 40 miles from the Zone Site Center to the service request. For example, an urgent maintenance request was received from 120 W. 6th St. Benson, AZ 85602, located 47.67 miles from the closest Zone A address (Tucson 255 W. Alameda, Tucson, AZ 85701), therefore it would require a four hour response time for physical presence for an urgent response.

Zone A1 – Sites that require a one hour phone response and a three hour physical presence onsite, but otherwise do not qualify as a Zone A sites. These sites have substantial need for urgent response times and are located beyond the 40 mile radius from either Zone A Site Center (see site center definitions above).

- Arizona State Prison Complex – Douglas, AZ
- Arizona State Prison Complex – Flagstaff, AZ
- Arizona State Prison Complex – Eymann in Florence, AZ
- Arizona State Prison Complex – Florence, AZ
- Arizona State Prison Complex – Florence West, AZ
- Arizona State Prison Complex – Kingman, AZ*
- Arizona State Prison Complex – Lewis in Buckeye, AZ
- Arizona State Prison Complex – Navajo County Jail, Holbrook, AZ*
- Arizona State Prison Complex – Safford, AZ*
- Arizona State Prison Complex – Winslow, AZ*
- Arizona State Prison Complex – Yuma, AZ*
- Flagstaff Communication Center – Flagstaff, AZ

*These sites allow four hours for the Contractor to have a physical presence on site due to their distance.

2.2 Preventative Response

The Contractor shall perform work in accordance with the manufacturer's recommendation to ensure it is performing to all defined technical and environmental specification for the system. The Contractor shall perform the minimum of two (2) to the maximum of four (4) inspections a year. The Contractor shall also conduct initial preventative maintenance ensuring performance begins at the optimal level. The Contractor, at

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the request of an Agency, may propose a preventative maintenance plan that includes an Infrared Scan option once-a-year on all UPS and PDU's.

2.3 Flat Rate Maintenance

Due to the varied nature of UPS systems the Contractor, at the request of an Agency, may propose a Flat Rate Maintenance Plan, which shall include all maintenance, services and equipment. Additional requirements may be specified by the Agency at the time of the Flat Rate Maintenance request.

2.4 Emergency Response

2.4.1 Quick Response

Perform repairs within 24-hour period (excluding weekends and holidays) and charge by flat hourly "not to exceed" rate (billable hours start when repair technician arrives on site and terminates upon Contractor's completion of work on site.).

2.4.2 Urgent Response

Requires immediate response and remedy. Minimum response time shall be one hour phone response and within three hours for physical representation onsite. Please see Response Time above.

3. Training

The Contractor shall offer training as necessary, at no additional cost to the State, on any product and or software offered on the awarded contract. Training shall be available throughout the state and ongoing throughout life of contract.

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A. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract for the materials or services as listed herein in service to the State.

B. Term of Contract

The term of any resultant Contract shall commence on date of award and shall continue for a period of one (1) year thereafter, unless terminated, canceled or extended as otherwise provided herein.

C. Contract Extensions five (5) Year Maximum

The Contract term is for the stated period subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years.

D. Contract Type

- Fixed Price
 Cost Reimbursement

E. Eligible Agencies (Statewide)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions 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 this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

F. Specific Agency Requirements

Certain State Agencies have specific access requirements regarding their facilities and/or information. Special requirements may be viewed as Exhibits in this document. These requirements are not all encompassing and there may be additional requirements for other agencies.

G. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

H. Volume of Work

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

I. Key Personnel

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

1. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30)



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calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

J. Price Adjustment

Contractor prices accepted and subsequently awarded by a Contract shall remain in effect for a minimum of one (1) year. The Contractor may request a price adjustment, but the State will not review or approve an increase until the Contract has been in effect for one (1) year. The State will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested, including information contained in the Consumer Price Index or similar official cost analysis to support any requested price increase. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment. Likewise, the Contractor shall offer the State a price adjustment reduction concurrent with reduced costs from their suppliers. Price reductions will become effective upon execution of a Contract amendment.

K. Price Reduction

Price reductions may be submitted to the state for consideration at any time during the Contract period. The Contractor shall offer the State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. The State at its own discretion may accept a price reduction. The Contractor shall request, in writing, a price reduction. The Contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.
2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
3. Documentation showing that the published cost reductions have been offered to other distributors.

L. Payment Procedures

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

M. Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

N. Security

Contractor's current and subsequent personnel, as well as those of their duly recognized subcontractors, shall comply with all applicable statutes, administrative regulation, policies, practices and procedures while providing supplies and/or

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services under this contract. Notwithstanding any additional security requirements in the Scope of Work, as deemed necessary by the State, certain personnel with access to sensitive information and/or infrastructure of the State or an Eligible Agency, shall be subject to background checks.

O. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

P. Employees of the Contractor

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

Q. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under contract with the State is a violation of the Contract and 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.

R. Contractor Performance Reports

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

S. Acceptance

Determination of the acceptability of services and or product shall be made by the sole judgment of the State. Acceptance shall be in writing, verbal acceptance for services or product will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%), which will be determined by the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

T. Authorization for Equipment and Services

Authorization for purchase of equipment and services shall be made only upon the issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. The State shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order.



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No further obligation for payment shall exist unless a) the Purchase Order is changed or modified with an official Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

U. Offshore Performance of Work Prohibited

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

V. Usage

This contract defined herein, may be used by State government and all Political Subdivisions (including the State's Universities, Community Colleges, K-12 School Districts, Counties, Cities, libraries, etc). State government entities (Mandatory Customers) are required to purchase Services via the resulting Contract(s). All other entities (Permissive Customers) may but are not required to purchase their Services needs via the resulting Contract(s).

W. Administrative Fee

Contractor shall pay an Administrative Fee to the State in the amount of one percent (1%) of the total contract sales. The Administrative Fee is calculated based on all sales transacted under the contract, minus all taxes and any returns or credits. The Administrative Fee shall not be charged directly to the customer, e.g., as a separate line item, a fee or a surcharge, but shall be included in the contract's unit prices.

The Administrative Fee shall be submitted, along with a Quarterly Usage Report documenting all contract sales, to the State Procurement Office within thirty (30) days following the end of each calendar quarter. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, see the State Procurement Office's web site at http://spo.az.gov/Contractor_Resources/Admin_Fee.

At its option, the State may limit the applicability of the Administrative Fee to contract sales from some customers and not to others, e.g., fee is only applicable to sales from members of the State Purchasing Cooperative and not sales to State Agencies. See the State's website (above) form more information in this regard. The State will provide thirty (30) days written notice before exercising or changing this option.

Failure to remit Administrative fees in a timely manner or remit fees inconsistent with the contract's requirements may result in the State exercising any recourse available under the contract including a third party audit of all contract activity. Should an audit be required by the State, the contractor shall reimburse the State for all costs associated with the audit up to \$5,000 or one (1%) percent of the contract's estimated annual value, whichever is higher.

X. Indemnification

The Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Vendor 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 Vendor 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

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Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Vendor from and against any and all claims. It is agreed that Vendor 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 Vendor 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 Contract Broker for the State of Arizona.

This indemnity shall not apply if the Vendor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

Y. Insurance Requirements

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 – 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
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named 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 against the State of Arizona, its departments, agencies, boards, commissions, universities and its 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

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities***



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performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its 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

Employers' Liability

Each Accident

\$ 500,000

Disease – Each Employee

\$ 500,000

Disease – Policy Limit

\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its 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: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **Charlotte Righetti, CPPB at 100 N. 15th Avenue, Suite 201, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with 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 (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

All certificates required by this Contract shall be sent directly to **(Charlotte Righetti, CPPB 100 N 15th Ave, Suite 201, Phoenix AZ 85007)**. 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

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policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insurers under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

APPROVAL: Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. 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.

Z. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and **will be restricted to least possible privilege**. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

AA. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

BB. Health Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a "Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or



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other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

CC. Shipping Charges

All products shall be shipped FOB Destination, Freight Prepaid and Added. Any shipping costs shall be quoted and billed as a separate line item and shall not be bundled in the product unit costs. Quotes shall show shipping costs as an estimate, if exact costs are not known at time of quotation. The State reserves the right to utilize other shipping carriers if the estimated costs for shipping are deemed to be excessive.

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UNIFORM TERMS AND CONDITIONS

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 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.



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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 Parol 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.

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 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

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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 the 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 or 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 A.R.S. 23-214, Subsection A.
- 3.11 Scrutinized Businesses. In accordance with A.R.S. 35-391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.
- 3.12 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.

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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 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 IRS 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
- 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.



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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.

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

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

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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 Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses 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,

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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 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

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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 interests 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.
- 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.



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State of Arizona
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

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.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
GRUBER TECHNICAL, INC.**

EXHIBIT B
Award and Rate Sheet

**CONTRACT PRICING BY AWARDED VENDOR
Effective September 24, 2013**

	Gruber Technical Inc.	World Wide Technology	Insight Public Sector Inc	Sabino Electric	INGH Power Systems Inc.	Black Box Network Services	Titan Power Inc
Alpha - Tier I	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	5%	30%
Alpha - Tier III	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	5%	30%
Alpha - Tier III	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	5%	30%
Alpha - Tier IV	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	5%	30%
APC - Tier I	20%	38%	36.50%	14%	20%	35%	NOT AWARDED
APC - Tier II	15%	38%	36.50%	14%	20%	35%	NOT AWARDED
APC - Tier III	21%	38%	39%	14%	20%	35%	NOT AWARDED
APC - Tier IV	21%	38%	39%	14%	20%	35%	NOT AWARDED
Emerson/Libert - Tier I	41%	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	25%
Emerson/Libert - Tier II	41%	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	25%
Emerson/Libert - Tier III	25%	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	28%
Emerson/Libert - Tier IV	25%	NOT AWARDED	37%	NOT AWARDED	NOT AWARDED	NOT AWARDED	28%
CPC - Tier I	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
CPC - Tier II	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Toshiba - Tier I	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	15%	NOT AWARDED	NOT AWARDED
Toshiba - Tier II	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	22%	NOT AWARDED	NOT AWARDED
Toshiba - Tier III	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Toshiba - Tier IV	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Staco - Tier I	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	30%	NOT AWARDED	NOT AWARDED
Staco - Tier II	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	25%	NOT AWARDED	NOT AWARDED
Staco - Tier III	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	25%	NOT AWARDED	NOT AWARDED
Staco - Tier IV	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Mitsubishi - Tier I	17%	NOT AWARDED	NOT AWARDED	NOT AWARDED	15%	NOT AWARDED	NOT AWARDED
Mitsubishi - Tier II	20%	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Mitsubishi - Tier III	22%	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Mitsubishi - Tier IV	22%	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Myers - Tier I	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	15%	30%
Myers - Tier II	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	15%	30%
Myers - Tier III	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	30%	30%
Myers - Tier IV	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	30%	30%
Eaton - Tier I	22%	NOT AWARDED	27%	NOT AWARDED	NOT AWARDED	20%	25%
Eaton - Tier II	42%	NOT AWARDED	24%	NOT AWARDED	40%	41%	38%
Eaton - Tier III	35%	NOT AWARDED	27%	NOT AWARDED	30%	33%	32%
Eaton - Tier IV	25%	NOT AWARDED	38%	NOT AWARDED	NOT AWARDED	26%	32%
Tripp-Lite - Tier I	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED
Tripp-Lite - Tier II	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED
Tripp-Lite - Tier III	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED
Tripp-Lite - Tier IV	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED
Tessco - Tier I	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	10%	NOT AWARDED
Tessco - Tier III	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	10%	NOT AWARDED
Tessco - Tier III	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	10%	NOT AWARDED
Tessco - Tier IV	15%	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	10%	NOT AWARDED
GNB (VRLA Batteries) All Tiers	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	50%
Powersonic (VRLA Batteries) All Tiers	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	37%
Energys/DataSafe (VRLA Bats) All Tiers	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	27%
C&D Technologies/Dynasty (VRLA Batteries) All Tiers	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	56%
C&D Technologies (Wet Cell Batteries) Tiers II, III and IV	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	35%	NOT AWARDED	NOT AWARDED
DEKA (VRLA Batteries) All Tiers	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	20%	NOT AWARDED	NOT AWARDED
Exteam Power - Tier I	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	33%
Exteam Power - Tier II	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	33%
Gamatronics - Tier III	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	NOT AWARDED	35%
Design Services (Hourly Rate)	\$ 95.00	\$ 150.00	\$ 104.00	\$ 120.00	\$ 200.00	\$ 100.00	\$ 115.00
Installation Services (Hourly Rate)	\$ 95.00	\$ 150.00	\$ 185.00	\$ 68.00	\$ 200.00	\$ 132.00	\$ 105.00
Preventative Maintenance Hourly Rate	\$ 125.00	NOT AWARDED	NOT AWARDED	\$ 72.00	NOT AWARDED	\$ 85.00	\$ 105.00
Emergency Maintenance, Quick Response	\$ 125.00	NOT AWARDED	NOT AWARDED	\$ 102.00	NOT AWARDED	\$ 130.00	\$ 105.00
Emergency Maintenance, Urgent Response	\$ 125.00	NOT AWARDED	NOT AWARDED	\$ 102.00	NOT AWARDED	\$ 175.00	\$ 105.00
Legacy Maintenance	\$ 125.00	NOT AWARDED	NOT AWARDED	\$ 102.00	NOT AWARDED	\$ 100.00	\$ 105.00