

**CITY CLERK  
ORIGINAL**

**C-10834  
04/26/2016**

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
M&J TROPHIES AND APPAREL**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 26 day of April, 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Balzic Enterprise, LLC an Arizona limited liability company dba M&J Trophies and Apparel, ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On May 1, 2013, under the State of Arizona Cooperative Purchasing Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the Awards, Recognition and Promotional Products and Services Contract, Contract NO. ADSP013-045236 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

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

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of Exhibit B, purchases can be made by governmental entities from the date of award, which was May 1, 2013, until the date the contract expires on April 30, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended

beyond April 30, 2018. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until April 30<sup>th</sup>, 2017. The City Manager or designee, however, may renew the term of this Agreement for one (1) one-year period until the Cooperative Purchasing Agreement expires on April 30<sup>th</sup>, 2018. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

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

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit C.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as the Cooperative Purchasing Agreement, unless the City and Contractor agree to a different schedule, as provided in Exhibit D.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed Forty Eight Thousand dollars 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  
Mike Davis  
City of Glendale Parks and Recreation  
Glendale, Arizona 8530  
623-930-2841

and

M&J Trophies and Apparel  
10802 N 43<sup>rd</sup> Avenue, Suite 2  
Glendale, AZ 85304  
602-548-4200

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

“City”

“Contractor”

City of Glendale, an Arizona  
municipal corporation

Balzic Enterprise, LLC, an Arizona limited  
liability company dba M&J Trophies and  
Apparel

By:



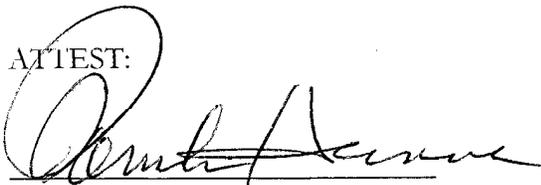
Kevin R. Phelps  
City Manager

By:



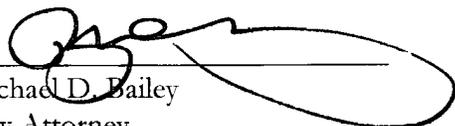
Name: John Balzic  
Title: Member

ATTEST:



Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:

  
Michael D. Bailey  
City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
M&J TROPHIES AND APPAREL**

**EXHIBIT A**  
Awards, Recognition and Promotional Products and Services  
ADSP013-045236

	<b>Solicitation as Amended</b>		<b>State of Arizona</b> <b>State Procurement Office</b> 100 N. 15th Ave, Suite 201 Phoenix, AZ 85007
	Solicitation No.: ADSPO13-00002566	PAGE 1	
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**1. Introduction:**

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 this solicitation is to conduct a competitive process, in accordance with Arizona Revised Statutes (ARS) 41-2501 et seq., to create a contract(s) from which the State and its Cooperative Members may acquire these products and services.

**2. Background:**

The State intends to implement contracts for the economical purchase of quality Awards, Recognition and Promotional Products and Services to replace the existing State contract set, SCC060018, *Promotional items* and the State contracts ADOT10-000938 – ADOT10-000944, *Award & Recognition*. Based on historical usage data and anticipated volumes, the estimated dollar spend under the resultant contract is approximately \$2 million annually. However no guarantee of the actual quantities is implied or expressed by this solicitation. Requirements shall be based on actual need. Contracts resulting from this solicitation will be used by multiple eligible agencies with delivery locations throughout the State.

**3. Scope of Products and Services:**

The Contractor(s) shall provide a wide-ranging selection of Awards, Recognition and Promotional Products and Services, including all necessary account and delivery services.

**3.1 Product Requirements:**

3.1.1 Awards, Recognition and Promotional products include, but are not limited to the following categories:

3.1.1.1 Awards and Recognition Products: Trophies, Plaques, Electronics, Certificates, Portfolios, Frames and/or Borders, as well as medals and ribbons. All military medals shall correspond to all United States, Department of Defense military regulations/criteria. Military Medals/Ribbons include: Longevity Service Medal, Adjutant General's Medal for the State of Arizona, Distinguished Service Medal, Meritorious Service Medal, State Service Ribbon (State of Arizona), Medal of Valor.

3.1.1.2 Promotional Products: Pens, Key Chains, Coffee Mugs, Stress Balls, Mouse Pads, Stickers, Frisbees, Insulated Water Bottles, Lunch Bags, Can Coolers, and Embroidered Apparel.

3.1.2 All products offered shall be suitable for a government agency and shall exclude any extravagant personal merchandise; offensive or risqué items or articles that are readily and easily converted into cash. Articles which may be easily converted to cash include: airline or cruise tickets, entertainment tickets, jewelry items without an agency logo or state seal.

3.1.3 Upon occasion, more valuable items may be required for events such as giveaways at Trade Shows or gifts for dignitaries. Such items may include, but are not limited to golf balls (engraved), golf clubs, backpacks, and putters.

**3.2 Service Requirements:**

3.2.1 The Contractor(s) shall accept orders for customization by the Customer, including but not limited to:

3.2.1.1 Imprinting,

3.2.1.2 Engraving,



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- 3.2.1.3 Embroidering,
- 3.2.1.4 Laser Printing, and
- 3.2.1.5 Digital Printing.

3.2.2 For items requiring customization as listed above, the Contractor(s) shall provide design services for artwork as required by the Customer.

3.2.3 For pre-designed artwork provided by the Customer, the Contractor(s) shall accept a variety of electronic formats such as .jpg, .gif, .cdr, .ai, etc. via email, ftp or other delivery method. All artwork shall remain the property of the Customer.

### 3.3 Length of Service Program Requirements:

3.3.1 The State shall select a variety of items from the Contractor's catalog to be designated as Length of Service Awards. Agencies shall not have the same logo requirements nor shall they require every item listed as a Length of Service Award. It shall be at the discretion of each Agency to determine the items to be available within their Agency.

3.3.2 The various lengths of service years, which are currently recognized, are listed below:

- 3.3.2.1 Less than 5 years,
- 3.3.2.2 5 year category,
- 3.3.2.3 10 year category,
- 3.3.2.4 15 year category,
- 3.3.2.5 20 year category,
- 3.3.2.6 25 year category,
- 3.3.2.7 30+ year category (i.e. 30 years, 35 years, 40 years, etc.), and
- 3.3.2.8 Any other specialty pins.

3.3.3 The Contractor(s) shall provide a variety of length of service items, increasing in nominal value for increased years of service. Past items most frequently used for length of service recognition for 5 and 10 years of service are as follows:

- 3.3.3.1 Length of service Lapel Pins/Tie Tacks
- 3.3.3.2 Charms

3.3.4 Each length of service award item shall display a State, City, County logo, etc. The Contractor shall produce an electronic and if requested a hardcopy catalog/brochure, with descriptive captions and individual color photos of those Length of Service Awards selected. The State of Arizona Seal will be used for electronic/hardcopy reference. The individual Agency shall provide logo artwork for their corresponding Agency and may request the Contractor to provide electronic/hardcopy samples of products with the corresponding agencies/political subdivisions logo. The Contractor shall retain original artwork on file for a period of five (5) years.

3.3.5 The award selection forms for Service Awards that are to be sent with the catalog/brochure shall include substantially equivalent information listed below (to be customized by each Agency):



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- 3.3.5.1 Date of Request
  - 3.3.5.2 Purchase Order No. (PO#)
  - 3.3.5.3 Employee Name
  - 3.3.5.4 Anniversary Date
  - 3.3.5.5 Agency/ Political Subdivision
  - 3.3.5.6 Years of Service
  - 3.3.5.7 Site Code/Org Code/ Mail Drop/Division
  - 3.3.5.8 Phone No.
  - 3.3.5.9 Item No. Ordered
  - 3.3.5.10 Supervisor's Name
  - 3.3.5.11 Supervisor's Phone No.
  - 3.3.5.12 List of Award Items
- 3.3.6 Each item purchased shall be individually wrapped or in a gift/presentation box. Delivery location to be determined by each Agency.
- 3.3.7 The Contractor shall supply an electronic (web-based) and if requested a hardcopy of the catalog/brochure for the Length of Service Awards chosen by the State. Each length of service award anniversary level should be on a separate page or designated within catalog/brochure. The prices shall be on a separate price sheet (pricing not to be inserted into catalog/brochure that is sent or given out to prospective awardee (employee). Multiple hardcopies may be requested by the ordering entity.
- 3.3.8 The Contractor(s) shall provide three (3) tiers of administration for the Length of Service Award Program as identified below. This service shall be considered an offered value add and shall not be charged to the participating Customer.
- 3.3.8.1 Basic Administration:
    - 3.3.8.1.1 The Agency shall present catalogs/brochures to eligible recipients.
    - 3.3.8.1.2 The Agency shall send the order form to the Contractor.
    - 3.3.8.1.3 The Contractor shall acknowledge the orders received and provide an approximate ship date.
    - 3.3.8.1.4 The Contractor shall ship awards to the Agency with each awards labeled with employee name, year level and item selected.
  - 3.3.8.2 Direct Administration:
    - 3.3.8.2.1 The Agency shall provide the Contractor with recipient information.
    - 3.3.8.2.2 The Agency shall record a greeting by Administrator.
    - 3.3.8.2.3 The Contractor shall send out recipient brochure packets.
    - 3.3.8.2.4 The Contractor shall send reminders to non-respondents.
    - 3.3.8.2.5 Orders are automatically passed into manufacturing.
    - 3.3.8.2.6 Orders shall be shipped to Agency designated locations
  - 3.3.8.3 Full Administration:
    - 3.3.8.3.1 Contractor receives recipient information electronically from the Agency.



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- 3.3.8.3.2 The Agency shall record a greeting by Administrator.
- 3.3.8.3.3 The Contractor shall email recipient brochure packets.
- 3.3.8.3.4 The Contractor shall email reminders to non-respondents
- 3.3.8.3.5 The Contractor shall email confirmation to respondent of item ordered and email confirmation to supervisor of employee selection
- 3.3.8.3.6 Orders are automatically passed into manufacturing
- 3.3.8.3.7 Orders shall be shipped to Agency designated locations

### 3.4 Online Catalog and Electronic Ordering System (Punch-Out) Requirements:

The State intends to use an online catalog for most of the purchases made from this Contact. The Contractor(s) shall provide an online catalog and electronic ordering system with capabilities to include:

3.4.1 The Contractor shall make available an online catalog to allow authorized users to make purchases from this contract through the State's eProcurement System (ProcureAZ). The Contractor shall have a secured website for placing online orders. The features and functions of any online ordering catalog that is created for use by the State under this contract shall include but shall not be limited to the following:

- 3.4.1.1 Access by standard web browsers;
- 3.4.1.2 Provide all the relevant product information, such as full color pictures of product, lead times, contract price, dimensions, imprint area, material, sizing, color selection, etc.;
- 3.4.1.3 The capability to visualize the product with logo and to interactively design items including: choosing product color, select decoration method, logo size, logo color options, etc.;
- 3.4.1.4 Ability to accommodate an unlimited number of logos and chose specific logo vs. unique art, as well as control the use of unauthorized logos;
- 3.4.1.5 Item status inquiry functionality that provides stock availability;
- 3.4.1.6 Provide instant order acknowledgement;
- 3.4.1.7 Capability of tracking orders;
- 3.4.1.8 Help functionality;
- 3.4.1.9 Ability to search for products within certain parameters such as cost, product type, etc.;
- 3.4.1.10 Reflect current catalog / price list and contract pricing;
- 3.4.1.11 Shall have ability to accept P-Cards and/or Purchase Orders;
- 3.4.1.12 Restricted to only those items that may be purchased under this contract that are within the general product categories establish by this contract;
- 3.4.1.13 Shall not include any items that are specifically excluded from this contract; and
- 3.4.1.14 Security features for safe online ordering.

3.4.2 Access. The Contractor shall provide access to and interconnectivity with ProcureAZ for the purpose of allowing authorized State system users to "Punch-Out" of the State's eProcurement system, and select contract products and services directly from the Contractor's website, and return to the State's system with pre-populated order details. Contractor shall cooperate with the State's system provider in the establishment and ongoing operations of their Punch-Out connection.



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3.4.3 Timeframe. The "Punch-Out" capability shall be fully functional within the first twelve (12) months of the contract begin date.

3.4.4 The cost associated with the Contractor's Punch-Out set-up, maintenance and support shall be borne by the Contractor.

### 3.5 Account Management and Customer Service Requirements

3.5.1 The Contractor(s) shall assign a company representative(s) to the State to act as a liaison between the Customer and the Contractor. A back-up person shall be provided in the event the company's primary representative is unavailable. The representative will be the main point of contact for the Customer.

3.5.2 A toll-free number shall be provided by the Contractor(s) for customer service issues as well as support for the online tool. This toll-free number shall also be utilized to place orders prior to the implementation of the Punch-Out.

### 4. Pricing Requirements:

Pricing shall be based on a discount off the lowest per unit price (End Quantity Price (EQP) or End Column Price) published in the applicable product supplier public catalog. The Contractor(s) shall offer a percentage off of EQP for each of the following tiers. Each tier represents a total order value.

Tier 1, Less than \$1,500

Tier 2, \$1,501-\$7,500

Tier 3, \$7,501-\$15,000

Tier 4, \$15,001-\$25,000

Tier 5, More than \$25,000

#### Allowable Flat Rate Labor Charges:

4.1 Design Services, offered at a flat rate.

4.2 Embroidery Services, offered at a flat rate.

4.3 Engraving Services, offered at a flat rate.

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**1. CONTRACT**

The contract between the State of Arizona and the Contractor shall consist of the solicitation as amended and the proposal submitted by the Contractor. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual requirement in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the Contractor's bid. In all other matters not affected by the written clarification, if any, the solicitation shall govern. Only the Procurement Officer or his/hers authorized designee is authorized to change or amend the specific terms, conditions or provisions of the agreement.

**2. TERM OF CONTRACT**

The contract shall begin upon the date of Contract award and shall continue for a term of one (1) year, unless terminated or extended in accordance to the terms of this contract.

**3. 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.

**4. CONTRACT TYPE (AS NEEDED)**

The contract shall be on an as needed, if needed basis.

- Fixed Price  
 Cost Reimbursement

**5. NON-EXCLUSIVE CONTRACT**

This contract has been 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. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

**6. 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.

**7. ESTIMATED QUANTITIES (CONSIDERABLE)**

The state anticipates considerable activity resulting from contracts that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

**8. ADMINISTRATIVE FEE / USAGE REPORTS**

- 8.1 Contractor shall assess an administrative fee in the amount of one (1%) against all contract sales to members of the State Purchasing Cooperative – including cities, counties, school districts and other qualified members.



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The administrative fee is calculated against all sales under this contract minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unit prices. An updated list of State Purchasing Cooperative members may be found at [http://spo.az.gov/Cooperative Procurement/SPC/default.asp](http://spo.az.gov/Cooperative_Procurement/SPC/default.asp). At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option.

8.2 Contractors shall submit a Quarterly Usage Report documenting all contract sales. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, and the proper Usage Report Forms see the State Procurement Office's web site at [http://spo.az.gov/Contractor Resources/Admin Fee/default.asp](http://spo.az.gov/Contractor_Resources/Admin_Fee/default.asp). Any alternate Quarterly Usage Report format shall be approved by the Procurement Officer. Any usage report that is submitted to the State for the purpose of satisfying this requirement shall be deemed public record and all information contained in such report shall not be considered confidential, including any supplemental information contained in the submitted report beyond that which is requested in the Sample Forms located at the State Procurement Office Web Site.

8.3 The Administrative Fee shall be submitted, along with a Quarterly Usage Report to the State Procurement Office within thirty (30) days following the end of each calendar quarter. Administrative Fees shall be submitted to the following address:

Arizona Department of Administration  
State Procurement Office  
Attention: Statewide Contract Administrative Fee  
100 N. 15th Avenue, Suite 201  
Phoenix, AZ 85007.

8.4 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31

8.5 The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

8.6 Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

## 9. VOLUME SALES REPORT

The Contractor shall furnish the State an annual report delineating the acquisition activity under the contract. The format of the report shall be approved by the State. At a minimum, it shall disclose all purchased items, unit cost, and quantity, by individual purchasing Agency, for all sales transacted within the year. The volume sales report shall be submitted annually to the Contracting Officer, Charlotte Righetti, CPPB, no later than July 31<sup>st</sup>.

## 10. 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.



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## 11. CUSTOMER SERVICE / LOCAL REPRESENTATIVE

- 11.1 The Contractor(s) shall assign a company representative(s) to the State to act as a liaison between the Customer and the Contractor. The representative(s) may be assigned by geographical region. Additionally, a back-up person is required in the event the company's primary representative is unavailable. The representative will be the main point of contact for the Customers.
- 11.2 A toll-free number shall be provided by the Contractor(s) for customer service issues as well as support for the online tool. This toll-free number shall also be utilized to place orders prior to the implementation of the Punch-Out.

## 12. 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.

## 13. SAMPLES

The Contractor may be requested to furnish samples of product(s) for examination by the Customer before a Purchase Order is released. Any product(s) requested shall be furnished within seven (7) working days from the date of written request and furnished at no cost to the Customer. Samples shall be sent to the address designated within the request correspondence.

## 14. ORDERING 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.

Any commodities to be furnished under this contract shall be ordered by issuance of a Purchase Order by the Agency. Such orders may be issued from effective date of contract award. All purchase orders are subject to the terms and conditions of this contract. In the event of conflict between a purchase order and this contract, the contract shall control. All purchase orders shall cite the contract number.

## 15. AUTHORIZATION FOR PRODUCTS AND SERVICES

Authorization for purchase of products 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. 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.

## 16. INTERNET ORDERING CAPABILITY / PUNCH-OUT

It is the intent of the State to utilize the Internet to place orders under this Contract. The Contractor shall make available an online catalog to allow authorized users to make purchases from this contract through the State's eProcurement System (ProcureAZ). The Contractor shall have a secured website for placing online orders. Contractor(s) without this capability or who do not commit to be able to provide this tool may be considered non-responsive and not eligible for award consideration.

## 17. CANCELLATION OF ORDER

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Orders can only be cancelled if production has not been started by the Contractor or if the mutually agreed delivery time cannot be met by the Contractor.

#### 18. SHIPPING TERMS

**Point of Delivery:** All product shipped to any authorized end user's location shall be shipped F.O.B. DESTINATION. The materials must be delivered to the "Ship to" address indicated on the agency's purchase order. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

**Transportation Costs and Packaging:** Freight terms shall be FREIGHT PREPAID AND ADDED. Transportation costs shall be charged as a separate line item and not included in unit cost of goods. Transportation costs shall be the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. The State reserves the right to utilize other shipping carriers. Unless otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

#### 19. DELIVERY

- 18.1 Contractor(s) shall be able to ship to or deliver to all State Agencies and Purchasing Cooperative Members throughout the entire State of Arizona; and
- 18.2 Deliveries shall be accomplished between the hours of 8:00 a.m. to 5:00 p.m, Monday through Friday only, except holidays.

#### 20. EXPEDITED DELIVERY

- 20.1 If the Customer determines that rush shipping or other alternate shipping is required, it shall notify the Contractor. The Contractor shall determine any additional costs associated with such delivery terms and communicate that cost to the Customer.
- 20.2 The Customer shall not advise the Contractor to proceed with an expedited shipment until acceptable terms are agreed upon and a purchase order issued. Upon agreeing to the additional costs, the Customer shall advise the Contractor to proceed.
- 20.3 Upon receipt of the product(s) and invoicing, the Customer shall ensure that any additional charges are in compliance with and do not exceed agreed to costs.

#### 21. 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. 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 of 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.

#### 22. WARRANTY

Contractor(s) shall provide a one (1) year warranty/guarantee against defects in material, workmanship and/or performance for all items. Warranty shall commence once material has been accepted by the Customer.

#### 23. QUALITY ASSURANCE GUARANTEES / DEFECTIVE PRODUCTS

Any materials delivered in poor condition or found to be defective, in excess of the amount authorized by the



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Purchase Order, or not included on the Purchase Order may, at the discretion of the contract user, be returned to the Contractor at the Contractor's expense within 30 days. Return Authorizations must be credited immediately once the Contractor receives the returned goods. The Contractor shall not be responsible for incorrect product being ordered by an Agency without the guidance of the Contractor and can only be returned at the discretion of the Contractor. All replacement materials shall be received by the State within ten (10) days of initial written notification unless otherwise agreed to by the Customer.

### 24. ADDITIONAL CHARGES

Any charges not delineated in this contract, including but not limited to set-up fees, embroidering fees, etc, shall not be added to materials purchased under this contract without written consent of the State of Arizona Procurement Office (Contract Amendment) and Customer Agency. All associated fees are included in the unit price of the products; additional charges will not be accepted or considered within this contract.

### 25. INVOICING

All billing notices or invoices shall be sent to the eligible using agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information.

- Both the contract number and contract release/purchase order number;
- Name and address of the contractor;
- The contractor's remittance address;
- Contractor's representative to contact concerning billing questions
- Delivery date and time
- Contractual payment terms
- Applicable taxes
- Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable.

### 26. 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.

### 27. PROCUREMENT CARDS

Contractor(s) shall accept Procurement Cards (P-Cards) as a form of payment.

### 28. PRICE

#### 28.1 INCREASE

The State may review a fully documented request for a price increase only at the time of contract extension. All written requests for price adjustments made by the Contractor shall be submitted 60 to 90 days prior to the



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anniversary or contract renewal date. All price adjustments will be implemented by a formal contract amendment. The State shall determine whether the requested price increase or an alternate option is in the best interest of the State. The price increase adjustment, if approved, will be effective upon the effective date of the contract extension.

The applicable product supplier public catalog(s) are subject to change at any time; however, price escalations are only permitted at the end of each contract term period effective annually at the time of renewal, and only where verified to the satisfaction of the State. Contract release order/purchase orders placed before a price increase is authorized shall be delivered at the purchase order price. However, if the price should decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. The percentage discount shall remain the same throughout the term of the contract, to include all renewals, and shall apply to any new product, which may be introduced and added to the manufacturer's product line. Purchasing agencies shall apply the firm fixed discount to the approved product supplier public catalog(s) that has been incorporated as part of the Contract by the Purchasing Officer, at the time the order is placed.

## 28.2 REDUCTION

Price reductions may be submitted in writing 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. Reductions are not allowable for 'spot purchases', they are effective until further notification or request for increase is granted by the State. Any price reductions shall only be accepted via a bilateral contract amendment.

## 29. VOLUME DISCOUNTS

The Contractor provides a volume discount delineated by dollars spent per order. There are five (5) Tiers. They are as follows:

Tier 1, volume discount	Orders less than:	\$1,500
Tier 2, volume discount	Orders between:	\$1,501-\$7,500
Tier 3, volume discount	Orders between:	\$7,501-\$15,000
Tier 4, volume discount	Orders between:	\$15,001-\$25,000
Tier 5, volume discount	Orders more than:	\$25,000

Additional volume discounts are not permitted unless proper approval is given in the form of a bilateral contract amendment.

## 30. CONTRABAND

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to or adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

### 1. DEFINITION - A.R.S. § 13-2501

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, nonprescription medication, etc.)



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## 2. PROMOTING PRISON CONTRABAND – A.R.S. § 13-2505

- o A person, not otherwise authorized by law, commits promoting prison contraband:
  - By knowingly taking contraband into a correctional facility or the grounds of such a facility; or
  - By knowingly conveying contraband to any person confined in a correctional facility; or
  - By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.
- o Promoting prison contraband is a Class 5 felony.

## 35. INDEMNIFICATION CLAUSE

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 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.*

## 36. 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.

**A. 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 \$1,000,000
- Products – Completed Operations Aggregate \$ 500,000
- Personal and Advertising Injury \$ 500,000
- Blanket Contractual Liability – Written and Oral \$ 500,000
- Damage to Rented Premises \$ 25,000
- Each Occurrence \$ 500,000



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- 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."*** 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.
- b. Policy shall contain a waiver of subrogation endorsement in favor of 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) \$ 500,000

- 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, involving automobiles owned, leased, hired or borrowed by the Contractor."*** 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.
- b. Policy shall contain a waiver of subrogation endorsement in favor of 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.
- c. Policy shall contain a severability of interests provision.

## 3. Worker's Compensation and Employers' Liability

Workers' Compensation  
Employers' Liability

Statutory

- Each Accident \$ 100,000
- Disease – Each Employee \$ 100,000
- Disease – Policy Limit \$ 100,000

- c. Policy shall contain a waiver of subrogation endorsement in favor of 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.
- d. 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.

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

- 1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance 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 the A.R.S. § 41-621 (E).
- 2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

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C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **Charlotte Righetti, CPPB at 100 N. 15<sup>th</sup> Avenue, Suite 201, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall be placed with companies duly 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 or duly authorized to transact Workers' Compensation insurance in the State of Arizona. 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.

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

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

G. **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.

H. **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.

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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



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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 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, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.



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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 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

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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.** 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 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona 85007.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
M&J TROPHIES AND APPAREL**

**EXHIBIT B**  
Award and Rate Sheet

**DISCOUNT SCHEDULE FOR:**  
*Awards, Recognition and Promotional Products and Services*

Offerors submitted Catalog Discounts & Flat Rate Labor Charges as follows. The discounts offered to users are Off EQP (End Quantity Price) no matter the quantity of the item being ordered. Offerors also provided a larger discount, in most cases, depending on the total order amount; each tier represents a total order value. Total order values are as follows: Tier 1, orders less than \$1,500; Tier 2, orders between \$1,501 and \$7,500; Tier 3, orders between \$7,501 and \$15,000; Tier 4, orders between \$15,001 and \$25,000; Tier 5, orders over \$25,000.

Shipping is no longer included in the price of the goods, it is to be quoted and billed as a separate line item.

	Boundless Network	Brown Bigelow	JP Business Solutions	Lane Award	M & J Trophies	Midwest Trophy	Office Depot	Pima Awards
Tier 1	10%	2%	5%	4%	20%	2%	10%	5%
Tier 2	13%	5%	10%	6%	20%	4%	10%	6%
Tier 3	15%	12%	15%	6%	25%	6%	15%	8%
Tier 4	20%	15%	20%	10%	25%	8%	15%	10%
Tier 5	22%	17%	25%	10%	25%	10%	15%	10%
Design Services	No Charge	\$75.00	No Charge	No Charge	No Charge	\$45.00	\$50.00	\$50.00
Embroidery Services	No Charge	\$75.00	No Charge	No Charge	No Charge	\$125.00	No Charge	\$30.00
Engraving Services	No Charge	\$45.00	No Charge	No Charge	No Charge	\$45.00	No Charge	\$25.00

**Contract Officer:**  
 Charlotte Righetti, CPPB  
 (602) 542-9127  
[charlotte.righetti@azdoa.gov](mailto:charlotte.righetti@azdoa.gov)

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
M&J TROPHIES AND APPAREL**

**EXHIBIT C**  
Scope of Work

**PROJECT**

Purchase Awards, Apparel, and Promotional products.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
M&J TROPHIES AND APPAREL**

**EXHIBIT D**

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$48,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

Purchase Awards, Apparel, and Promotional products.