

**CITY OF TOLLESON
INVITATION FOR BIDS (IFB)
FOR
WASTEWATER TREATMENT CHEMICALS
FISCAL YEARS 2022-2024**

The City of Tolleson, Arizona is extending an invitation for bid to supply various chemicals used at the City's Wastewater Treatment Plant. Bids shall be submitted as fixed-price and honored for three (3) Fiscal Years (FY 2021-22, FY 2022-23 and FY 2023-24), with the first FY beginning July 1, 2021 and ending June 30, 2022, renewable annually thereafter.

Separate bids are requested for each of the following chemicals: Chlorine 99.9%, Ferric Chloride 40%, Hydrogen Peroxide 27%, Sodium Bisulfite 38%, Sodium Hydroxide 25%, Sodium Hydroxide 50%, and Polymer¹. Each chemical shall be bid separately and submitted according to the requirements in the IFB Packet specific to each chemical.

The IFB documents related to this notice will be listed on and available for download from the City's website: www.tolleson.az.gov, under Doing Business in Tolleson – Bid Opportunities/Procurement. IMPORTANT: All interested parties should provide an email address to receive addendums to the Procurement Officer at bidquestions@tolleson.az.gov. If you download the IFB Packets without registering, there will be no record that you are interested in this solicitation, and you will not be sent any addendums to this IFB.

Questions must be in writing by email directed to:

Inez Babchuk, Procurement Officer
bidquestions@tolleson.az.gov

Submittals are due at Tolleson City Hall, 9555 West Van Buren Street, Tolleson, AZ 85353, no later than 1:00 p.m. (local time, Phoenix, AZ) on Thursday, June 3, 2021. Late submittals will not be accepted. The City of Tolleson reserves the right to reject any and all submittals.

¹ Polymer performance testing is required prior to submitting a bid and must be completed by Thursday, May 27, 2021 for a polymer bid to be considered. Prospective polymer bidders should contact Luis 'Beto' Lucero, Senior Operator, at beto.lucero@tolleson.az.gov or call (623) 478-8742 no later than Monday, May 24, 2021 to schedule and confirm a performance testing date.

Published in the Arizona Business Gazette on Thursday,
May 6, 2021 and Thursday, May 13, 2021.

INVITATION FOR BIDS
for
SODIUM HYDROXIDE (50%) FOR WASTEWATER TREATMENT

City of Tolleson
9555 West Van Buren St.
Tolleson, AZ 85353

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	IFB-2021-29
Solicitation Title:	SODIUM HYDROXIDE (50%)
Release Date:	May 6, 2021
Advertisement Dates:	May 6, 2021 – Arizona Business Gazette May 13, 2021 – Arizona Business Gazette
Pre-Submittal Conference (if necessary):	None
Final Date for Inquiries:	May 21, 2021
Proposal Due Date and Time:	June 3, 2021 1:00 p.m. (local time, Phoenix, Arizona)
Shortlist Announced for Oral Interviews (if necessary):	TBD
Oral Interviews (if necessary):	TBD
Negotiation Period	TBD
Target City Council Award Date:	June 22, 2021
Anticipated Agreement Start Date:	July 1, 2021
RFP Administrator:	Inez Babchuk 623-936-2711 <u>bidquestions@tolleson.az.gov</u>

* In the event that a Vendor cannot be selected based solely on Proposals submitted, Oral Interviews may be conducted at the City's sole discretion.

** The City of Tolleson reserves the right to amend the solicitation schedule as necessary.

ARTICLE I - DEFINITIONS

For purposes of this Invitation for Bids, the following definitions shall apply:

1.1 “Bid” or “Offer” means a responsive bid or quotation submitted by a Bidder in response to this Invitation for Bids.

1.2 “Bid Deadline” means the date and time set forth on the cover of this IFB for the City Clerk to be in actual possession of the sealed Bids.

1.3 “Bid Opening” means the date and time set forth on the cover of this Invitation for Bids for opening of sealed Bids.

1.4 “Bidder” means any person or firm submitting a competitive Bid in response to this IFB.

1.5 “Confidential Information” means that portion of a Bid, proposal, Offer, Specification or protest that contains information that the person submitting the information believes should be withheld, provided (i) such person submits a written statement advising the City of this fact at the time of the submission and (ii) the information is so identified wherever it appears.

1.6 “Contract” means, collectively, the (i) Offer/Bid, (ii) this IFB, including all exhibits, (iii) the Notice of Award, (iv) the Notice to Proceed or Purchase Order(s), (v) any approved Addendum, Change Order or Amendment, (vi) the Contractor’s Certificates of Insurance and a copy of the Declarations Page(s) of the insurance policies, (vii) any Plans, Specifications or other documents attached, appended or incorporated herein by reference. Alternate or optional bid items will become part of the Contract only if they are accepted by the City in writing on the Price Sheet.

1.7 “Contractor” means the individual, partnership, corporation or limited liability company who has submitted a Bid in response to this IFB and who, as a result of the competitive bidding process, is awarded a contract for Materials or Services by the City.

1.8 “Day(s)” means calendar day(s) unless otherwise specified.

1.9 “Invitation for Bids” or “IFB” means this request by the City for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the Services and/or Materials in compliance with the City’s Procurement Code.

1.10 “Materials” means any personal property, including equipment, materials, replacements and supplies provided by the Contractor in conjunction with the Contract and shall include, in addition to Materials incorporated in the Project, equipment and other material used and/or consumed in the performance of Services or Work.

1.11 “Multiple Award” means an award of an indefinite quantity contract for one or more similar products, commodities or Services to more than one Bidder.

1.12 “Price” means the total expenditure for a defined quantity of a commodity or service.

1.13 “Procurement Administrator” means a City employee, as designated on the cover of this IFB, who has specifically been designated to act as a contact person to the Bidders and/or Contractor relating to their IFB.

1.14 “Procurement Agent” means the City Manager or authorized designee.

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1.15 “Procurement Code” means the City’s Procurement Code, as amended from time to time.

1.16 “Project” means the purpose and Work described as set forth in Section 2.1, Purpose/Scope of Work, of the IFB.

1.17 “Services” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in the Contract. This term does not include “professional and technical services” as defined in the Procurement Code.

1.18 “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply or Services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

1.19 “Subcontractor” means those persons or groups of persons having a direct contract with the Contractor to perform a portion of the Work and those who furnish Materials according to the plans and/or Specifications required by this Contract.

1.20 “City” means the City of Tolleson, an Arizona municipal corporation.

1.21 “City Representative” means the City employee who has specifically been designated to act as a contact person to the City’s Procurement Administrator, and who is responsible for monitoring and overseeing the Contractor’s performance under the Contract and for providing information regarding details pertaining to the Work.

1.22 “Vendor” means any firms, entities or individuals desiring to prepare a responsive Bid in response to this IFB.

1.23 “Work” means all labor, Materials and equipment incorporated or to be incorporated in the Project that are necessary to accomplish the Services required by this Contract.

ARTICLE II – BID PROCESS; BID AWARD

2.1 Purpose/Scope of Work. The purpose of this Invitation for Bid (this “IFB”) is to secure a qualified Vendor to provide Sodium Hydroxide (50%) (the “Materials”) for use at the City Wastewater Treatment Plant (the “WWTP”) during fiscal years 2021-2022, 2022-2023 and 2023-2024, subject to annual renewals. Materials purchased under this IFB are primarily intended to adjust pH at various points in the treatment process at the WWTP. The selected Vendor shall provide transportation, delivery and off-loading of the Materials into tanks at the WWTP and remove empty containers (the “Services”). The resulting Contract is intended to be an indefinite quantity and indefinite delivery contract for the Materials based on the City’s needs. The City does not guarantee any minimum or maximum amount of purchases will be requested by the City under this IFB.

2.2 Amendment of IFB. No alteration may be made to this IFB or the resultant Contract without the express, written approval of the City in the form of an official IFB addendum or Contract amendment. Any attempt to alter this IFB/Contract without such approval is a violation of this IFB/Contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City including, but not limited to, Contract cancellation and suspension and/or debarment of the Bidder or Contractor.

2.3 Preparation/Submission of Bid. Bidders are invited to participate in the competitive bidding process for the Services specified in this IFB. Bidders shall review their Bid submissions to ensure the following requirements are met.

A. Irregular/Non-responsive Bids. The City will consider as “irregular” or “non-responsive” and shall reject any Bid not prepared and submitted in accordance with the IFB and Specifications, or any Bid lacking sufficient information to enable the City to make a reasonable determination of compliance with the Specifications. Unauthorized or unreasonable exceptions, conditions, limitations, or provisions shall be cause for rejection. Bids may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the Procurement Agent, any of the following are true:

1. Bidder does not meet the minimum required skill, experience or requirements to perform the Services or provide the Materials.
2. Bidder has a past record of failing to fully perform or fulfill contractual obligations.
3. Bidder cannot demonstrate financial stability.
4. Bid submission contains false, inaccurate or misleading statements that, in the opinion of the Procurement Agent, are intended to mislead the City in its evaluation of the Bid.

B. Specification Minimums. Bidders are reminded that the Specifications stated in the Scope of Work as part of this IFB are the minimum levels required and that Bids submitted must be for products or Services that meet or exceed the minimum level of all features specifically listed in this IFB. Bids offering less than the minimums specified will be deemed non-responsive. It shall be the Bidder’s responsibility to carefully examine each item listed in the Scope of Work.

C. Required Submittal. Interested parties must submit **one original copy** of the Proposal on USB Drive (or electronic media approved by the City) in printable Adobe or Microsoft Word format (or other format approved by the City). Bidders shall provide a bid sheet Bid using their own forms and format, complete with:

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1. Price Sheet. The price sheet shall be provided on the first page of the Bid and shall clearly show the total offering price in terms of - **Price Per Gallon**. The price sheet shall also clearly show the breakout for all applicable tax and the tax rate.
2. Licenses; Certifications; DBE/MBE Status.
3. Product label information, the hazard classification and the Global Harmonized System Fact Sheet (GHSFS), [formerly known as the Material Data Safety Sheets – (MSDS)] for the Materials.
4. Information on the reportable spill quantity for the Materials, the pertinent reporting information and cleanup procedures, including required on-site material and supplies.
5. The size (in gallons) of the tankers to be used in making bulk and/or mini-bulk deliveries. Include the smallest and the largest tanker sizes available for deliveries. The Bidder shall also include a company statement identifying the maximum amount of product (in gallons) that can be transported by bulk tanker and/or mini-bulk delivery, as applicable.
6. An exhibit delineating the weight of the Materials at various concentrations and any formulas used by Bidder in converting the weight to gallons.
7. A metal assay for pollutant metals and other toxic substances (e.g. cadmium, chromium, zinc, mercury and acids).

D. Bidder Responsibilities. All Bidders shall (1) examine the entire Bid package, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Bid and (4) submit the entire, completed Bid package by the official Bid Deadline. Late Bids shall not be considered. Bids not submitted with an **original, signed** Price Sheet by a person authorized to bind the Bidder shall be considered non-responsive. Negligence in preparing a Bid shall not be good cause for withdrawal after the Bid Deadline.

E. Sealed Bids. All Bids shall be sealed and clearly marked with the IFB title and number on the lower left-hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Bid.

F. Address. All Bids shall be directed to the following address: **Procurement Office**, City of Tolleson, 9555 West Van Buren Street, Tolleson, Arizona 85353, or hand-delivered to the City Procurement Officer by the Proposal Due Date and Time indicated on the cover page of the IFB.

G. Modifications. Erasures, interlineations, or other modifications in the Bid shall be initialed in original ink by the authorized person signing the Bid.

H. Withdrawal. At any time prior to the specified Bid Opening, a Bidder (or designated representative) may amend or withdraw its Bid. Facsimile, electronic (email) or mailgram Bid amendments or withdrawals will not be considered. No Bid shall be altered, amended or withdrawn after the specified Bid Deadline, unless otherwise permitted pursuant to the City Procurement Code.

2.4 Inquiries; Interpretation of Specifications; Scope of Work.

A. Inquiries. **Verbal or telephone inquiries directed to City staff will not be answered. Only inquiries directed to City staff via e-mail will be answered.** Within two business days following the Final Date for Inquiries listed on the cover page of this IFB, answers to all questions received via e-mail will be e-mailed to all parties who obtained an IFB package from the City and who legibly provided an e-mail address to the City. No questions, submitted in any form, will be answered after the Final Date for Inquiries.

B. Addenda. It shall be the Bidder's responsibility to check for addenda issued to this IFB. Any addendum issued by the City with respect to this IFB will be available at:

City of Tolleson City Hall,
9555 West Van Buren Street, Tolleson, Arizona 85353
City of Tolleson website at: www.tolleson.az.gov

C. Approval of Substitutions. The Materials, products, and equipment described in this IFB establish a standard or required function, dimension, appearance, and quality to be met by any proposed substitution. No substitute will be considered unless written request for approval has been received by the City Representative at least 10 Days prior to the Bid Deadline. Each such request shall include the name of the Material or equipment for which it is to be substituted and a complete description of the proposed substitute, including any drawings, performance, and test data and any other information necessary for evaluation of the proposed substitute. If a substitute is approved, the approval shall be by written addendum to the IFB. Bidder shall not rely upon approvals made in any other manner.

D. Use of Equals. When the Scope of Work or Specifications for Materials, articles, products and equipment include the phrase "*or equal*," Bidder may bid upon and use Materials, articles, products and equipment that will perform equally the duties imposed by the general design. The City Representative will have the final approval of all Materials, articles, products and equipment proposed to be used as an "equal." No such "equal" shall be purchased or installed without prior, written approval from the City Representative. Approvals for "equals" before Bid Opening may be requested in writing to the City Representative for approval. Requests must be received at least 10 Days prior to the Bid Deadline. The request shall include the name of the Material, article, product or equipment for which the item is sought to be considered an equal and a complete description of the proposed equal including any drawings, performance and test data and any other information necessary for approval of the equal. All approval of equals shall be issued in the form of written addendum or amendment, as applicable, to this IFB or the Contract.

E. Bid Quantities. It is expressly understood and agreed by the parties hereto that the quantities of the various classes of Services and/or Materials to be furnished under this Contract, which have been estimated as stated in the Bidders' Offer, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the Bidders' Offers presented for the Work under this Contract. The selected Contractor agrees that the City shall not be held responsible if any of the quantities shall be found to be incorrect and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of Services and/or Materials as estimated and the Services and/or Materials actually provided. If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not (1) invalidate the Contract or the whole or any part of the Scope of Work, (2) excuse Contractor from any of the obligations or liabilities hereunder or (3) entitle Contractor to any damage or compensation except as may be provided in this Contract.

2.5 Prospective Bidders' Conference. A Prospective Bidders' Conference may be held. If scheduled, the date and time of the Prospective Bidders' Conference will be indicated on the cover page of this IFB. The

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Prospective Bidders' Conference may be designated as mandatory or non-mandatory on the cover of this IFB. Bids shall not be accepted from Bidders who do not attend a mandatory Prospective Bidders' Conference. Bidders are strongly encouraged to attend those Prospective Bidder's Conferences designated as non-mandatory. The purpose of the Prospective Bidders' Conference will be to clarify the contents of the IFB in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this IFB or any apparent omission or discrepancy should be presented to the City at the Prospective Bidders' Conference. The City will then determine if any action is necessary and may issue a written amendment or addendum to the IFB. Oral statements or instructions will not constitute an amendment or addendum to the IFB.

2.6 New Materials. All Materials to be provided by the Contractor and included in the Bid shall be new, unless otherwise stated in the Specifications.

2.7 Pricing. Work shall be provided at the unit prices as set forth in the Price Sheet submitted by the Bidder. Bid Prices shall be submitted on a per unit basis by line item, when applicable and include all applicable sales tax. In the event of a disparity between the unit price and extended price, the unit price shall prevail.

2.8 Subcontracts. If Subcontractors will be utilized in providing the Materials or Services, Bidders shall submit a listing of all proposed Subcontractors or suppliers that the Bidder intends to utilize relating to the Project, in the form attached hereto as Exhibit B. Proposed Subcontractors shall be qualified and have the requisite licenses and be licensed to do business in the State of Arizona. The Bidder may list itself by writing "Self" adjacent to the category of work for which the Bidder assumes responsibility for performance of the Work assumes the responsibility of the Subcontractor. The City reserves the right to review and reasonably object to the Subcontractors proposed, and the selected Contractor shall not retain a Subcontractor to which the City has a reasonable objection.

2.9 Payment; Discounts. Any Bid that requires payment in less than 30 Days shall not be considered. Payment discounts of 30 Days or less will not be deducted from the Bid Price in determining the low Bid. The City shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.

2.10 Taxes. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Transaction privilege tax, if any, shall be included in the unit price for each line item. It shall not be considered a lump sum payment item. Bidder should not include tax on any allowances. It is the sole responsibility of the Bidder to determine any applicable State tax rates and calculate the tax accordingly. Failure to accurately tabulate any applicable taxes may result in a determination that a Bid is non-responsive. The Bidder shall not rely on, and shall independently verify, any tax information provided by the City.

2.11 Federal Funding. It is the responsibility of the Bidder to verify and comply with federal requirements that may apply to the Work (the "Federal Requirements"). It is also the responsibility of the Bidder to incorporate any necessary amounts in the Bid to accommodate for required federal record-keeping, necessary pay structures or other matters related to the Federal Requirements, if any.

2.12 Cost of Bid/Proposal Preparation. Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation; the Bidder is responsible for all costs incurred in responding to this IFB. All materials and documents submitted in response to this IFB become the property of the City and will not be returned.

2.13 Public Record. All Bids shall become the property of the City. After Contract award, Bids shall become public records and shall be available for public inspection in accordance with the City's Procurement Code, except that any portion of a Bid that was designated as confidential pursuant to Section 2.14 below shall remain confidential from and after the time of Bid opening to the extent permitted by Arizona law.

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2.14 Confidential Information. If a Vendor/Bidder believes that a Bid, Specification, or protest contains information that should be withheld from the public record, a statement advising the Procurement Agent of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor or Bidder as confidential shall not be disclosed until the Procurement Agent makes a written determination. The Procurement Agent shall review the statement and information with the City Attorney and shall determine in writing whether the information shall be withheld. If the City Attorney determines that it is proper to disclose the information, the Procurement Agent shall inform the Vendor or Bidder in writing of such determination.

2.15 Vendor Licensing and Registration. Prior to the award of the Contract, the successful Bidder shall be registered with the Arizona Corporation Commission and authorized to do business in Arizona. Bidders shall provide license and certification information with the Bid, attached as Exhibit C and incorporated herein by reference. Upon the City's request, corporations, limited liability companies, partnerships or other entities shall provide Certificates of Good Standing from the Arizona Corporation Commission. A City of Tolleson business license is also required.

2.16 Bidder Qualifications.

A. Experience and References. Bidder must provide three references demonstrating successful completion of at least three similar projects within the past 60 months, one of which must have a dollar value of at least 75% of the total bid for this Project as set forth in the Price Sheet. Total bid price does not include any City allowances identified. For the purpose of this Solicitation, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this Project in size, nature and scope. *These references will be checked*, and it is Bidder's responsibility to ensure that all information is accurate and current. Bidder authorizes the City's representative to verify all information from these references and releases all those concerned from any liability in connection with the information they provide.

B. Investigation. The City's representative may conduct any investigation deemed necessary to determine the Bidder's ability to perform the Work in accordance with the Contract Documents. The three lowest Bidders may be requested to submit additional documentation within 72 hours to assist the City in its evaluation.

2.17 Certification. By submitting a Bid, the Bidder certifies:

A. No Collusion. The submission of the Bid did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It 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 City employee, officer, agent or elected official in connection with the submitted Bid or a resultant Contract. In the event that the resultant Contract is canceled pursuant to Subsection 3.13(E) below, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Contract.

E. No Signature/False Statement. The signature on the Bid and the Vendor Information Form is genuine. Failure to sign the Bid or the Vendor Information Form, or signing either with a false statement, shall void the submitted Bid and any resulting Contract, and the Bidder may be debarred from further bidding in the City.

2.18 Bid Bond. No Bid Bond shall be required for this solicitation.

2.19 Award of Contract.

A. Multiple Award. The City may, at its sole discretion, accept Bidder's Offer as part of a Multiple Award.

B. Line Item Option. Unless the Bidder's Offer indicates otherwise, or unless specifically provided within the Contract, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. The City's flexibility with respect to the method of award also includes any items bid as alternates, which may be accepted or rejected, in whole or in part, at the City's sole discretion.

C. Evaluation. The evaluation of this Bid will be based on, but not limited to, the following: (1) compliance with Scope of Work, (2) Price, including alternates selected by the City, if any, and taxes, but excluding "as-needed" services requested by the City and (3) Bidder qualifications to provide the Services/Materials.

D. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this IFB, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Bids or portions thereof and (3) cancel or reissue an IFB.

E. Offer. A Bid is a binding offer to contract with the City based upon the terms, conditions and specifications contained in this IFB and the Bidder's responsive Bid, unless any of the terms, conditions, or specifications are modified by a written addendum or contract amendment. Bids become binding contracts when the Acceptance of Offer and Notice of Award is executed in writing by the City. Bidder Offers shall be valid and irrevocable for **90** Days after the Bid Opening.

F. Protests. Any Bidder may protest this IFB, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the process set forth by the City Manager or qualified designee.

ARTICLE III – GENERAL TERMS AND CONDITIONS

3.1 Term. This Contract shall be effective from the date it is fully executed by the City and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Contract **may be renewed for up to two successive one-year terms** (each a "Renewal Term") if (A) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (B) at least 30 Days prior to the end of the then-current term of the Contract, the Contractor requests, in writing, to extend the Contract for an additional one-year term and (C) the City approves the additional one-year term in writing (including any price adjustments), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Contract shall cause the Contract to terminate at the end of the

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then-current term of this Contract; provided however, that the City may, at its discretion and with the agreement of the awarded Contractor, elect to waive this requirement and renew this Contract. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

3.2 Compensation. The City shall pay the Contractor for Services completed and accepted by the City at the rates set forth in the Price Sheet. The Contractor shall not commence any billable Work or provide any Services under this Contract until the Contractor receives an executed purchase order from the City.

3.3 Payments. The Contractor will be paid on the basis of invoices submitted following acceptance of the Services/Materials. All invoices shall document and itemize all Services performed and Materials delivered in sufficient detail to justify payment and shall include the Work Order number authorizing the transaction and shall be delivered to the City Accounts Payable address indicated on the face of the Work Order, unless otherwise specified. All transportation charges must be prepaid by the Contractor. If invoice is subject to a cash discount, the discount period will be calculated from the date of receipt of the claim or the Materials, whichever is later.

3.4 Documents. All documents prepared and submitted to the City pursuant to this Contract shall be the property of the City.

3.5 Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Contract. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire City residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Contract, key personnel shall not be removed or replaced without prior written notice to the City. The term "Key Personnel" means individuals who will be directly assigned to this Project and includes, but is not limited to, the owner, principals, project manager, project superintendent, scheduler, engineer and supervisory personnel. At least two of the Bidder's Key Personnel must have a minimum of three years' experience in similar projects (defined above) and the scheduler must have experience in employing scheduling techniques appropriate for this Project. Resumes of Key Personnel shall be submitted upon request by the City's representative. If Key Personnel are not available to perform the Services for a continuous period exceeding 30 Days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.

3.6 Inspection; Acceptance. All Work shall be subject to inspection and acceptance by the City at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the City.

3.7 Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The City has no obligation to provide Contractor, its employees or Subcontractors any business registrations or licenses required to perform the specific Services set forth in this Contract. The City has no obligation to provide tools, equipment or Material to Contractor.

3.8 Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

3.9 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such

person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the Work or Services of the Contractor, its officers, employees, agents, or any tier of Subcontractor in the performance of this Contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

3.10 Changes; Cancellation. The City reserves the right to cancel or make changes in the Services or Materials to be furnished by the Contractor within a reasonable period of time after issuance of Work Orders. If such changes cause an increase or decrease in the amount due under the Work Order, or in the time required for Contractor’s performance, an acceptable adjustment shall be made and the Work Order shall be modified in writing accordingly. Any agreement for adjustment must be asserted in writing within 10 Days from when the change is ordered. Should a Work Order be canceled, the City agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Work Order. The City will not reimburse the Contractor for any costs incurred after receipt of a notice of cancellation from the City, or for lost profits, shipment of product or costs incurred prior to issuance of a Work Order.

3.11 Insurance.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Contract at the City’s option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

3. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all Work or Services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.

5. Primary Insurance. Contractor’s insurance shall be primary insurance with respect to performance of this Contract and in the protection of the City as an Additional Insured.

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6. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7. Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the Work or Services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

9. Use of Subcontractors. If any Work under this Contract is subcontracted in any way, Contractor shall execute written agreement with its Subcontractors containing the indemnification provisions set forth in this subsection and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

10. Evidence of Insurance. Prior to commencing any Work or Services under this Contract, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Contract, issued by Contractor’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the policies required by this Contract expire during the life of this Contract, it shall be Contractor’s responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Contract shall be identified by referencing this Contract. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Contract. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Contract will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (i) Commercial General Liability - Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
- (ii) Auto Liability - Under ISO Form CA 20 48 or equivalent.
- (iii) Excess Liability - Follow Form to underlying insurance.

b. Contractor's insurance shall be primary insurance with respect to performance of the Contract.

c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Work or Services performed by Contractor under this Contract.

d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

B. Required Insurance Coverage.

1. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

2. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's Work or Services under this Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

3. Professional Liability. If this Contract is the subject of any professional Services or Work, or if the Contractor engages in any professional Services or Work in any way related to performing the Work under this Contract, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

4. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over

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Contractor's employees engaged in the performance of Work or Services under this Contract and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days' prior written notice to the City.

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

3.13 Termination; Cancellation.

A. For City's Convenience. This Contract is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed Services performed and Materials delivered to the termination date.

B. For Cause. If either party fails to perform any obligation pursuant to this Contract and such party fails to cure its nonperformance within 30 Days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Contract immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 Days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (1) provides written notice to the non-defaulting party and (2) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 Days. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

C. Due to Work Stoppage. This Contract may be terminated by the City upon 30 Days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to Work stoppage, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

D. Conflict of Interest. This Contract is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the City or any of its departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

E. Gratuities. The City may, by written notice to the Contractor, cancel this Contract if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the City for the purpose of securing this Contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

F. Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes

and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

3.14 Miscellaneous.

A. Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that all Services and Materials provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and Subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual Work of Contractor, its employees or Subcontractors. The Contractor, and not the City, shall determine the time of its performance of the Services provided under this Contract so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2.1 above and in Exhibit A. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Contract.

B. Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the Contractor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services or Materials including, but not limited to, the following: (1) existing and future City and County ordinances and regulations; (2) existing and future state and federal laws; and (3) existing and future Occupational Safety and Health Administration standards.

C. Contract Amendments. This Contract may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor; provided, however, that Change Orders may be issued and approved administratively by the City when such changes do not alter the Contract Price.

D. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will promptly be physically amended to make such insertion or correction.

E. Severability. The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

F. Entire Agreement; Interpretation; Parol Evidence. This Contract represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations,

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warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.

G. Assignment; Delegation. No right or interest in this Contract shall be assigned or delegated by Contractor without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Contract by Contractor.

H. Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the Services or Materials specified herein without the prior written approval of the City. The Contractor is responsible for performance under this Contract whether or not Subcontractors are used.

I. Rights and Remedies. No provision in this Contract shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Contract. The failure of the City to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by law, or the City's acceptance of and payment for Services, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Contract.

J. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

K. Liens. All Services or Materials shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

L. Offset.

1. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.

2. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

M. Notices and Requests. Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (3) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Tolleson
 9555 West Van Buren Street
 Tolleson, Arizona 85353
 Attn: Crystal Zamora, City Clerk

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With copy to: Pierce Coleman P.L.L.C.
7730 E Greenway Rd. Suite 105
Scottsdale, Arizona 85260
Attn: Justin Pierce, City Attorney

If to Contractor: _____

Attn: _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

N. Overcharges by Antitrust Violations. The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

O. Force Majeure. Except for payment for 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; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party, in accordance with subsection 3.14(M), of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract. Force majeure shall not include the following occurrences:

1. Late Delivery. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences.

2. Late Performance. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Subsection 3.14(O). 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. If either party is delayed at any time in the progress of the Work by force majeure, then the delayed party shall notify the other party in accordance with Subsection 3.14(M) and shall make a specific reference to this Section, 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. The time of Substantial Completion or Final Completion shall be extended by written Contract amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

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P. Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Contract.

Q. Records and Audit Rights. To ensure that the Contractor and its Subcontractors are complying with the warranty under subsection 3.14(R) below, Contractor's and its Subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Contractor and its Subcontractors' employees who perform any Work or Services pursuant to this Contract (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (1) evaluation and verification of any invoices, payments or claims based on Contractor's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of Work under this Contract and (2) evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 3.14(R) below. To the extent necessary for the City to audit Records as set forth in this subsection, Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Contract for the duration of the Work and until three years after the date of final payment by the City to Contractor pursuant to this Contract. Contractor and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or its Subcontractors reasonable advance notice of intended audits. Contractor shall require its Subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract.

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

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

T. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Contract, the IFB, the Scope of Work, any City-approved Purchase Order, the Price Sheet, any City-approved Work Orders, invoices and the Contractor's response to the IFB, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2.1 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Contract (collectively, the "Unauthorized Conditions"), other than the City's project-specific quantities, configurations or delivery dates, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Contract.

U. Non-Exclusive Contract. This Contract is entered into with the understanding and agreement that it is for the sole convenience of the City of Tolleson. The City reserves the right to obtain like goods and Services from another source when necessary.

V. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Contractor. Contractor may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Contract in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Contract shall be transacted solely between the requesting Eligible Procurement Unit and Contractor. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Contract. The City shall not be responsible for any disputes arising out of transactions made by others.

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EXHIBIT A
TO
INVITATION FOR BIDS
FOR
SODIUM HYDROXIDE (50%) FOR WASTEWATER TREATMENT

[Scope of Work]

See following pages.



CITY OF TOLLESON

9555 West Van Buren • Tolleson, AZ 85353 • 623.936.7111 • fax 623.907.2629

SODIUM HYDROXIDE (50%) FOR WASTEWATER TREATMENT

SCOPE OF WORK

The WWTP is a 17.5 mgd, Trickling Filter/Solids Contact plant, currently operating at 5.5 mgd. The City of Tolleson is seeking a vendor to provide Sodium Hydroxide (50%) by bulk shipment for use at the City's wastewater treatment facility (the "WWTP") for three-year contract, subject to annual renewals. Materials purchased under the Invitation to Bid (IFB) are primarily intended to be used to adjust pH at various points in the wastewater treatment process. The selected vendor shall provide the safe transportation, delivery, and off-loading of material to the WWTP.

The resulting contract is intended to be for an indefinite quantity. The City does not guarantee a minimum or maximum amount of purchases will be requested by the City under this IFB.

Quality of Materials. The Sodium Hydroxide shall be supplied as an aqueous solution of 50% concentration (+/-2%) by weight, all of which shall be in solution. As an overriding factor, regardless of any specification stated herein, the product shall not contain compounds or elements or minerals in such concentrations as to cause or contribute to an effluent limitation in the one of the WWTP permits to be exceeded. Vendor shall provide with the Bid, the analysis and documentation of all trace metals and compounds that exist in the Sodium Hydroxide solution. Vendor shall also indicate typical pH of the solution. Product being delivered to the facility having a concentration of less than 48% or greater than 52% solution, by weight, shall be considered unacceptable and not in conformance with the terms of the Contract. Materials not meeting the specifications outlined in this Scope of Service, or IFB, if known at the time of delivery, is cause for rejecting the delivery at the sole expense of the Vendor and without any additional cost to the City. Product demonstrating toxicity, or which, in the judgment of the City, may contribute to or may result in the WWTP's permit to be exceeded or otherwise violated shall be considered grounds for the City to discontinue purchases and use of the Materials.

Delivery of Materials. Vendor shall utilize tanker trucks to deliver the Materials to the City, unless an alternate method is otherwise approved or requested in advance by the City. WWTP has a designated Sodium Hydroxide (Caustic Soda) storage and feed facility. The storage facility consists of two (2), covered, unheated, 20,000 gallons each, nominal capacity tanks, of FRP construction; each designed for 50% solution, and has emergency eye wash/shower station. The quantity ordered per shipment will be determined by the City at the time the order is placed. Normal deliveries of Sodium Hydroxide should be made within 48 hours from the placement of an order. In the event that product is required to satisfy an emergency need, the Vendor shall make every effort to deliver such quantities

(whether by bulk, mini-bulk, or other container) as may be necessary to satisfy an impending or immediate need.

Time of Delivery. Vendor must have the ability and commit to delivering the material to the WWTP to sustain the plant's dewatering and thickening operation without interruption. Unless otherwise approved in advance, deliveries shall be made during the hours of 6:00 a.m. to 2:00 p.m., Monday through Friday. The City will not accept deliveries on Saturdays, Sundays or Holidays, or during off hours. If requested, Vendor shall develop a delivery schedule to be followed during the term of the Contract. If the operational requirements of the WWTP dictate, the City may elect to change Vendor's delivery schedule. Should Vendor be unable to comply with the delivery schedule, fail to keep the WWTP in a sufficient supply of the material, or not be able to supply the WWTP with an unexpected or emergency delivery within 24 hours (due to lapse in communication, manufacturing, transportation, or any other cause), the City reserves the right, in its sole discretion, to obtain materials from any other source without waiving or voiding any of the terms and conditions of the Contract.

Fuel Surcharges. Bidders should carefully consider any and all fuel costs to manufacture, transport, and deliver the Materials and return tanks or storage containers after use. These costs are considered an integral part of the Bid price. This City will not accept additional fuel surcharges during the of the Contract. Vendor will be required to honor their Bid price for the term of the Contract, without price modification or additional fuel surcharges.

Shipping, Receiving, and Unloading. Vendor shall deliver and unload the material to the designated storage tank at the WWTP. Upon arrival at the WWTP, Vendor shall first check in at the WWTP administrative office. The Vendor shall wait to be directed by WWTP personnel to the designated Materials storage tanks. At this time, the meter reading at the tanker truck or level reading at the tanks will be taken or the tanker truck weighed on the plant scale, unless an alternate measuring mechanism has been established between Vendor and the City. Vendor shall not fill beyond the designated fill point or overfill any storage tanks. Vendor personnel performing the unloading of the product shall immediately cease the unloading operation if instructed to do so by WWTP personnel. Vendor agrees to abide by the City's safety requirements and shall make every effort to prevent overfilling the primary storage vessel when making deliveries. Vendor personnel shall be trained in safe handling of the Materials and shall follow all company safety procedures. All equipment necessary to ensure the safe delivery and unloading of the Materials shall be supplied and used by Vendor when unloading the Materials.

Determining/Measuring the Quantity Unloaded. The City and the Vendor shall develop a mutually agreeable method of determining the actual gallons unloaded to the material storage tank. Regardless of the means used to determine the actual gallons unloaded, a copy of the weight ticket must be provided to the City, at time of delivery, for each order. The percent concentration and the per gallon weight of each delivered load shall also be provided to the City. The City has a certified scale and if requested, the Vendor will use this scale before and after each delivery. The actual quantity of product unloaded to the storage tank(s) shall be determined by one of the following methods:

Vendor will use this scale before and after each delivery. The actual quantity of product unloaded to the storage tank(s) shall be determined by one of the following methods:

1. By readings obtained from a flow meter on the tanker which the calibration has been certified and displays the readings in gallons. The meter reading shall be recorded by WWTP personnel before and after unloading; or
2. By storage tank level indicator - Prior to unloading the material, the level of the storage tank (measured in feet and converted to gallons) is recorded, and then is subtracted from the storage tank level (converted to gallons) after unloading is complete. The readings shall be recorded by WWTP personnel before and after unloading; or
3. By calculating the number of gallons unloaded to the City's storage tank(s), based on the weight per gallon of product and the net weight of product actually unloaded to the storage tank(s). The tanker truck shall be weighed on the scale at the treatment plant before unloading, then again, after unloading. The following calculation will be made to determine the gallons unloaded: The total weight of the tanker immediately after unloading the product shall be subtracted from the total weight of the tanker immediately prior to unloading. The resultant net weight of the product, representing the amount, in pounds that was unloaded, will be divided by the per gallon weight of the product to determine the total gallons to be invoiced. The readings of all weight scale measurements shall be recorded by WWTP personnel and a copy provide to the Vendor; or
4. By an alternate method as may be agreed upon by the Vendor and the City.

The City reserves the right to use any of the methods described above to make an assessment of the quantity delivered or unloaded.

Rejection. The City reserves the right to refuse delay delivery or to limit the amount to be unloaded at the time of delivery. The City will not be liable to pay demurrage for any reason. Vendor shall deliver the Materials within a lead time of 48 hours of when the order is placed. The City shall have the right to reject, and not be charged for any quantity of product delivered to the site which is in excess of the quantity ordered. The City shall not be charged for any amount of product that is unable to be unloaded from the tanker due to physical conditions (e.g. the slope of the ground) or mechanical conditions (e.g. remaining contents in the tanker not able to be pumped or otherwise unloaded).

The City desires a 3-year rate lock on pricing.

EXHIBIT B
TO
INVITATION FOR BIDS
FOR
SODIUM HYDROXIDE 50% FOR WASTEWATER TREATMENT
[Subcontractor Listing]

See following page.

EXHIBIT C
TO
INVITATION FOR BIDS
FOR
SODIUM HYDROXIDE (50%) FOR WASTEWATER TREATMENT
[Licenses; Certifications; DBE/WBE Status]

See following page.

LICENSES; CERTIFICATIONS; DBE/WBE STATUS

- Attach a copy of your Contractor's License to your bid submittal.**
- Attach a copy of your City of Tolleson Business License to your bid submittal.**
- Attach a copy of your Arizona Transaction Privilege Tax License**

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes _____, No _____.

If yes, please provide details and documentation of the certification.