AIRPORT WORKER RETENTION AND REVENUE PROTECTION ORDINANCE—DRAFT

Section 1. Definitions.

The following definitions shall apply throughout this Ordinance:

(1) "Awarding authority" means any person, including the City Aviation Department or a Contractor, that awards or otherwise enters into leases or contracts to perform janitorial or parking services at Phoenix Sky Harbor International Airport:

(2) "Contractor" means any person that enters into a lease or Service Contract with the awarding authority, and any sub-contractors to such contractor at any tier, who employs ten (10) or more persons.

(3) "Employee" means any person employed to provide services pursuant to a Service Contract.

(4) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited-liability company, trust, association, or other entity that may employ individuals or enter into other contracts.

(5) "Service Contract" means a contract or lease let to a Contractor by the awarding authority for the performance of any services covered by subsection 1.

(6) "Successor service contract" means a Service Contract with the awarding authority where the same or similar services to be performed have previously been rendered to the awarding authority as part of the same program or at the same facility under another service contract or have previously been rendered by the awarding authority's own employees.

(7) "Departing contractor" means a contractor whose service contract expires without renewal or whose contract is terminated in whole or in part, and includes the awarding authority itself where work previously rendered by the awarding authority's own employees is the subject of a successor service contract. Where a subcontract of a service contract has been terminated prior to the termination of the service contract, the terminated subcontractor shall for purposes of this Ordinance be deemed a departing contractor.

Section 2. Transition Employment Period

All service contractors and awarding authorities who enter into service contracts to be performed at Phoenix Sky Harbor International Airport shall be subject to the following obligations:

(1) *A departing contractor shall, within three (3) days after receiving notice that it will cease providing a service at the Airport, provide to the successor contractor, with the name, contact information, date of hire, and job classification of each employee employed at the site(s) covered by the departing contractor at the time it received such notice. The Aviation Department shall supply the departing contractor with contact information for the successor contractor.*

(2) *On the date said service contract ends, the departing contractor shall update the workforce information previously provided to make it current to the actual termination date.*

(3) *Where a service contract or contracts are being let where the same or similar services were rendered by under multiple service contracts, the awarding authority shall pool the employees, ordered by seniority within job classification, under such prior contracts.*

(4) *A successor contractor or sub-contractor shall retain, for a transition employment period of 90 workdays each employee who was employed by the departing contractor at the site(s) covered by the service contract unless there is just cause for discharging such individual based on their performance or conduct.*

(5) *If at any time a successor contractor determines that fewer employees are required to perform the new service contract than were required by the departing contractor, the successor contractor shall be required to retain employees by seniority. Those not rehired shall be placed on a preferential hiring list of employees eligible for retention under the preceding subsection from which the successor contractor shall hire additional employees which list shall be maintained for two years unless otherwise provided by collective bargaining agreement.*

(6) *Nothing herein shall require that supervisory employees of the departing contractor be provided with supervisory positions by the successor contractor.*

(7) *Any finding as to just cause under a grievance and arbitration procedure selected by employees or their collective bargaining representative after their hire shall also be binding under this Ordinance.*

SECTION 3. Enforcement of Transitional Reemployment Rights

(1) Each contract entered into by the Aviation Department after the effective date of this ordinance involving employment under service contracts shall contain contract provisions incorporating the reemployment provisions of this Ordinance and shall provide that the employees of a departing contractor shall be third-party beneficiaries of the contract entitled to enforce such contract provisions via equitable relief and damages and any other remedies available at law or in equity, including all contractual remedies available to the City under such contract.

(2) In addition, the Aviation Department is authorized to investigate alleged violations of these reemployment rights and to enforce such rights.

SECTION 4. Preventing Disruptions of Service and Revenues

(1) The Aviation Department shall not enter into any contracts for services covered by Section 1(1) of this Ordinance unless the Person receiving the contract has first entered into a binding agreement with each labor organization active in organizing or representing Employees in the janitorial or parking industry in which the organization has waived its rights and its members' rights to engage in picketing, striking, boycotting, or otherwise interfering with the Airport's services and revenues (and in the case of a collective bargaining agreement, also waived such rights for the bargaining unit).

(2) An employer may request relief from the Council of the foregoing requirement if the employer has clear and convincing evidence that the labor organization's demands in exchange for such a waiver are clearly contrary to the Airport's proprietary interests, and after such employer has exhausted mediation and factfinding before a neutral agreeable to the employer, the Department and the labor organization. The neutral's charges, if any, shall be borne by the employer unless the neutral otherwise directs.

SECTION 4. Findings

(1) The Council has determined that employees currently providing parking and janitorial services at the Phoenix Sky Harbor Airport are generally providing satisfactory services and have obtained unique security clearances and training which would be lost to the Airport if the Aviation Department's replacement of a service contractor were to cause such employees to be put out of work.

(2) Such unemployment would have a negative social impact on the community and increase burdens on taxpayer-funded support systems. The Council believes these employees are entitled to a fair opportunity to show through

their work for a new contractor that they are worthy of being kept on by such contractor.

(3) Employees in the janitorial and parking industries are being actively organized by labor organizations. Picketing, strikes or boycott activities by such organizations at the Airport are likely to disrupt services and increase the Airport's costs and cut its revenues. Accordingly, it is in the City's own proprietary interests to require employers in these industries to seek labor harmony before such employers are provided City contracts. The City itself cannot ban such strikes or other activities because these are activities protected by federal labor law, but such rights can be waived via labor agreement, and the U.S. Supreme Court has held that contracting agencies can demand that their prospective contractors have such labor harmony agreements.

SECTION 5. Severability.

If any severable provision or provisions of this Ordinance or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect notwithstanding such invalidity.