Revenue Contract Solicitation (RCS)  
Request for Responses  
Vending Services For The City of Phoenix Aviation Department  
AVN RCS 17-006

PROPOSED SCHEDULE

All dates are subject to change without prior notice.  
The City of Phoenix is not responsible for cost or losses incurred by any Respondent  
in the preparation of a Response or due to date changes.

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<th>ACTIVITY (All times are “local Phoenix time”)</th>
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<td>Pre-Response Meeting at 11:30 a.m.</td>
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Submit Responses, requests for alternate formats and questions to:

Gioia Bufkin, Buyer  
City of Phoenix Aviation Department  
Phoenix Sky Harbor International Airport  
2485 East Buckeye Road  
Phoenix, AZ  85034  
602-286-1272 (TEL)/800-781-1010 (TTY)  
gioia.bufkin@phoenix.gov  
http://www.phoenix.gov/solicitations

This RCS is issued pursuant to Phoenix City Code Chapter 43 and Administrative Regulation 3.10.  In the event of any conflicts between this RCS on the one hand, and P.C.C. Chapter 43 and A.R. 3.10 on the other, P.C.C. Chapter 43 and A.R. 3.10 will govern.

This RCS does not commit the City to award any Contract.
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Attachment B  Maps of Vending Locations
Attachment C  Pictures of Current Vending Service Types/Concepts
Attachment D  Business References
Attachment E  Conflict of Interest and Solicitation Transparency Disclosure Form
Attachment F  Notarized Affidavit
Attachment G  Vending Services Lease
SECTION I. INTRODUCTION

The City of Phoenix (City) is seeking vending services at Phoenix Sky Harbor International Airport (PHX), Deer Valley Airport (DVT) and Goodyear Airport (GYR), collectively referred to as “Airports”. The City owns and operates Phoenix Sky Harbor International Airport, Deer Valley Airport and Goodyear Airport, which are managed by the Aviation Department.

PHX is the 11th busiest airport in the U.S. in terms of operations, serving over 44 million passengers through three terminals in calendar year 2015. As the largest economic engine in the State of Arizona, Phoenix Sky Harbor International Airport strives to deliver a world-class experience to every customer, every day. PHX is America’s Friendliest Airport®. Visit https://skyharbor.com/About/Information/AirportStatistics for more PHX statistics.

The City is looking for vendor(s) to provide food and non-alcoholic beverage vending services to non-public areas serving airport employees. The successful Respondent will be responsible for furnishing, operating, supplying, and maintaining thirty-seven (37) vending units pre- and post-security locations throughout PHX and its facilities, DVT, and GYR. Each location was selected because of the number of airport employees working in non-public areas and spaces where utilities are available. The City expects to launch vending services, in accordance with this solicitation, no later than ninety (90) days after the contract award. The lease term for any resulting vending services contract will be three years with two-one year renewal options.

The City anticipates entering into one (1) or more Leases to provide food and non-alcoholic vending services to non-public areas at PHX and its facilities, DVT, and GYR.

A. MINIMUM QUALIFICATIONS

Respondent Experience:
Respondent must provide sufficient documentation to demonstrate it meets the minimum qualifications as identified below or its Response will be disqualified as non-responsive. Each Respondent is required to have at least one of the following within the past 5 years:

i. Two (2) or more continuous years of owning or providing vending service operations with active involvement in the day-to-day management of the retail business operation; or

ii. Two (2) or more continuous years of senior or executive management responsibility for a vending services operation; or

iii. A management staff member or executive officer who has three (3) or more continuous years of senior or executive management responsibility for a retail business operation.

Each Respondent is responsible for providing working company telephone numbers or company email addresses to be used by Aviation to verify the Respondent’s experience. If the Respondent’s experience cannot be verified, experience for that reference will not be counted toward the minimum qualifications.
B. QUALIFICATIONS AND EXPERIENCE OF THE RESPONDENT

The Respondent must provide its qualifications and experience to allow the panel to evaluate its qualifications and experience to provide vending services.

C. DEFINITIONS

The following definitions apply to this RCS except as otherwise expressly provided or as required by the context. Capitalized terms used but not defined in this RCS have the meanings as specified in Phoenix City Code Chapter 43 and Administrative Regulation 3.10.

A. **AGGRIEVED PARTY** means a person or a business that intends to submit a response that alleges a mistake, impropriety or defect in the solicitation will harm the person or business.

B. **DAYS** means calendar days, except as otherwise expressly provided in the RCS.

C. **DISCUSSIONS** mean an exchange between the Procurement Officer and one or more Respondents submitting responses determined to be Reasonably Susceptible responses.

D. **GOOD CAUSE** means substantial grounds or evidence based upon facts not in dispute as determined by the procurement officer that the failure by an aggrieved party or a Respondent to submit a timely Response, protest or appeal was beyond its control due to misinformation relayed in writing by a city employee.

E. **MICRO MARKETS** means a fully automated, unstaffed, retail health food store that offers a range of products.

F. **REASONABLY SUSCEPTIBLE RESPONSE** means a Response that, based on the evaluation criteria, has a substantial chance of resulting in a contract award.

G. **RESPONDENT** means a person or business that submits a response to this Revenue Contract Solicitation (RCS).

H. **RESPONSE** means a written Response to this Revenue Contract Solicitation (RCS).

I. **RESPONSIBLE** means to be fully capable of meeting all of the requirements of the solicitation, including possessing the capacity, operational and financial capability, and integrity to perform as contractually required.

J. **RESPONSIVE RESPONSE** means an offer or response that on its face satisfies all material requirements of the solicitation.
D. CONTRACT

The term of the lease will be three (3) years, with two (2) one-year renewal options, which will be exercised at the sole discretion of the Aviation Director.

Respondents are advised to read carefully the pertinent Lease Agreement (Attachment G), to which the successful Respondent(s) will be bound. The information in this RCS is not intended to completely define the proposed contractual relationship to be entered into by the City and the successful Respondent(s). The lease terms may be revised at the sole discretion of the City at any time during the RCS process and/or prior to execution.

E. RESPONSE GUARANTEE

Each Response must be accompanied by a response guarantee in the form of a cashier’s check payable, without condition or restrictive endorsement, to the City of Phoenix in the amount of $2,500.

Response guarantees of all unsuccessful Respondent(s) will be returned, without interest, within a reasonable timeframe as determined by the Aviation Director.

The response guarantee of the successful Respondent(s) will be returned, without interest, after the successful Respondent(s) has furnished the City with the guarantee instruments and insurance policies required by the Lease Agreement (Attachment G). Should the successful Respondent(s) fail to execute the contract or furnish the guarantee instruments or provide insurance within thirty (30) days after contract award, the Respondent’s response guarantee may be forfeited as liquidated damages.

F. PRE-RESPONSE MEETING

Attendance at the pre-response meeting is not mandatory, Potential respondents are strongly encouraged to attend the pre-response meeting, which will be held in the City of Phoenix Aviation Department building (Level 1) PAAB Conference Room, located at 2485 East Buckeye Road, Phoenix Arizona 85034, on the date and time listed on page 1.

Please respond to make your reservation, at least one (1) day prior to the pre-response meeting date listed on page 1. If you plan to attend the pre-response meeting use one of the following methods to respond:


OR

2. Email to busopps.aviation@phoenix.gov: Please include in your email subject line: “RSVP Vending RCS Pre-Response Meeting”. Email content should include:
   i. Company Name.
   ii. Number of Attendees.
   iii. Will attend the Pre-Response meeting.
   iv. Email Address of each Attendee.
   v. Telephone Number of each Attendee.
G. QUESTION & ANSWER (Q&A) PROCESS

Respondents are strongly encouraged to read this RCS in its entirety. Failure to read and/or understand any portion of this RCS will not be cause for waiver of any portion of the RCS or subsequent contracts. If Respondents discover any mistakes, improprieties or defects in the RCS, they may submit a report of any mistakes, improprieties or defects, in writing to busopps.aviation@phoenix.gov no later than the question deadline listed on Page 1.

All questions about this RCS, including the Vending Services Lease Agreement (Attachment G), must be submitted in writing no later than the question deadline listed on Page 1 to busopps.aviation@phoenix.gov. All written questions will be responded to in writing. Pre-Response meeting attendees and potential Respondents who request such notification in writing, will be notified by e-mail when documents related to this RCS are available at https://www.phoenix.gov/solicitations.

H. RESPONSE LIMITATION

The City is issuing a single RCS for the award of one (1) or more contracts.

1. Aviation will review all responses submitted in response to this RCS. However, no Respondent or a business or person affiliated with the Respondent may submit multiple responses. The following will be deemed multiple Responses:

   a. The City receives more than one (1) response from a Respondent or a business or person affiliated with the Respondent.

2. If multiple responses are received from affiliated persons or entities, all responses from those affiliated persons or entities will be deemed non-responsive and rejected.

3. Respondent and a business or person affiliated with the Respondent include:

   a. A parent and its corporate subsidiary;
   b. A holding company and its constituent company;
   c. Constituent companies of a single common holding company;
   d. Subsidiaries of a common parent;
   e. A limited liability company and a member or manager of the limited liability company;
   f. Limited liability companies with common members or managers;
   g. A partnership and one of its partners, or multiple partners in a single partnership;
   h. A person or entity proposing as a joint venture partner or joint venture on separate Responses; or
   i. A person or entity proposing as a prime or sole Respondent and also proposing as a joint venture partner or joint venture, on a separate Response.

It is the intent of the City that this prohibition applies regardless of whether the affiliated person or business submits a response independently or as partner of a joint venture or other partnership.

Each Response stands on its own. Contingent or conditional responses will be rejected.
I. **RESPONDENT EXCEPTIONS**

The City will award the contract(s) on a fair and competitive basis and will not accept any changes to the material provisions or requirements of this RCS. Respondents that take exception to, add to, or subtract from any material provision or requirement of this RCS may be considered as attempting to change the provisions or requirements of this RCS to gain an unfair advantage over other Respondents. Responses including such exceptions or changes, or that are contingent or conditional, are subject to rejection as non-responsive Responses. Non-material exceptions or changes will only be considered if approved by the City during the Q&A process. No new exceptions or changes will be considered after the recommended Respondent has been identified. Any material change(s) including but not limited to type of vending machines or micro market concepts will not be allowed.

J. **AMENDMENTS TO THIS RCS**

Aviation may amend this RCS before or after the solicitation deadline listed on page 1. Changes to this RCS will be in writing as an addendum and posted at [https://www.phoenix.gov/solicitations](https://www.phoenix.gov/solicitations). All persons and businesses that received the initial RCS issuance notice, will be notified that an addendum is available to download.

Respondents may not rely on any statement by any City employee, consultant, or official regarding this RCS unless the statement is in writing and is posted as an addendum or as part of the Q&A process.

K. **ESTABLISHED BUSINESS**

All Responses from a business are required to include a copy of its registration from the Arizona Corporation Commission (ACC) to demonstrate the Respondent meets this requirement as an established business prior to the award of the Lease.

L. **AIRPORT SECURITY**

All individuals assigned to work at PHX and its facilities as a result of this RCS must pass a fingerprint-based Criminal History Records Check, pass a Federally-mandated Security Threat Assessment, and obtain an Aviation-issued security credential or badge. Successful Respondent(s) must comply with all airport security requirements.

Section II. SCOPE OF WORK

A. SCOPE OVERVIEW

Each successful Respondent must meet all contractual requirements including:

1. Provide 37 vending machine units in 13 locations at PHX and its facilities, DVT and GYR; locations are airside and landside (pre- and post-security); ranging from 1 to 6 vending machine units at each non-public location, and will install type of vending machine unit minimally required at each location. Attachment A contains a list of the locations and vending concepts required and the optional services that are encouraged.
2. Respondent needs to have the ability to increase or decrease the amount of vending machine units, type of concept, and/or number of locations over the course of the lease based upon changing needs at the discretion of the Aviation Director.
3. Vending services include, but are not limited to traditional food snacks & non-alcoholic beverages, frozen foods, carousel machines, and micro market options.
4. If proposed in solicitation, respondent will provide a micro market option, that is strongly encouraged for the Aviation Department Office building and potentially at other locations.
5. Prices of items must be clearly marked and be comparable, as well as competitive with like vending services offered off airport.
6. Vending services provided to airport employees only in non-public areas.
7. Respondent may utilize subcontractors to provide services or products identified in its response to this solicitation. Subcontractors must be identified in the response. Any changes to the solicitation are subject to approval by the Aviation Department. Sale of the following items are strictly prohibited: Alcohol, tobacco products, e-cigarettes or vaping products, general merchandise such as t-shirts, hats, magazines or newspapers, and any type of lottery or gambling tickets. All types of gambling are prohibited.
8. Only electricity will be provided to each location. Any other needs such as camera or data lines may be installed at the expense of the Respondent(s) upon approval of the Aviation Department.

B. PERCENTAGE RENT

For the Term, Lessee shall pay only a Percentage Rent of annual Gross Sales as follows (Attachment G):

1. Twenty percent (20%) for pre-packaged snacks and bottled/canned beverages sold from a vending unit.
2. Thirteen percent (13%) for food and beverages sold in a market concept (if applicable).

C. POURING RIGHTS DISCLOSURE

In the future, the City may enter into exclusive beverage pouring rights partnership and contract. If such an instance occurs, advance notice of such an agreement will be provided and a timeline in which the vending services should be in compliance with this partnership and related requirements.
SECTION III. RESPONSE INSTRUCTIONS AND EVALUATION CRITERIA

RESPONSE INSTRUCTIONS

A. Delivery of Response

Each Respondent must individually submit a sealed package that is marked with the Respondent’s name and the name of this RCS.

Respondent must submit the following:

(1) One (1) original Response,
(2) Five (5) hard copies of the Response,
(3) One (1) electronic copy of the Response on a USB drive, using Microsoft Word, Excel, or unlocked pdf format, and in the same page order as the hard copy,

Responses must be received during normal business hours by Aviation’s Administrative Receptionist at the address listed on Page 1 before the solicitation deadline listed on page 1. Aviation administrative office normal business hours are 8:00 a.m. to 5:00 p.m. Phoenix time. Responses received after the deadline date and time will be rejected as non-responsive unless good cause can be shown.

B. Submittal

In order to be considered, Respondent must complete and submit its response in accordance with this solicitation, no later than the solicitation deadline and time specified on page one (1) and guidelines. (See Section III.E) The City will not be responsible for any Respondent(s) errors or omissions.

C. Withdrawal

At any time prior to the solicitation deadline, a Respondent (or designated representative) may correct or withdraw its response with a written request to the Procurement Officer that is signed by Respondents duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals will not be considered.

If Respondent chooses to resubmit after withdrawing original submission, Respondent must submit by the solicitation deadline.

D. Form of Response

Responses not following the specified format below or that are incomplete, obscure, conditional, or contain additions not requested, exceptions to material provisions, or irregularities of any kind, may be deemed non-responsive and rejected.

Forms are provided as Attachments to the RCS to organize the information to be submitted by a Respondent in its Response. The forms must be submitted in the Response package, in letter-size (8.5” x 11”), typed in 12 point Arial font. Each Respondent is responsible for ensuring the forms are complete.
Where financial or numerical data is provided, the Respondent is responsible for the accuracy of its numbers and calculations. All dollar amounts must be in U.S. dollars.

The original Response and each hard copy must be submitted separately in a 3-ring 8.5" x 11" binder. Responses are limited to seventy-five (75) double-sided, letter-size pages typed in 12 point Arial font. The pages of each Response must be numbered. All necessary Attachments are included in this page limit.

Each Response must include all of the following and must be organized using the Tab numbers listed below:

E. Compiling Your Response

Please ensure your submission is type written and double sided.

**Tab 1 – Table of Contents**

Respondent must provide table of contents for entire response with page numbers.

**Tab 2 – General Information**

Respondent must provide:
1. Response guarantee as specified in (Section I.E),
2. Business References (Attachment D),
3. Conflict of Interest and Solicitation Transparency Disclosure Form (Attachment E),
4. Notarized Affidavit (Attachment F)

**Tab 3 – Experience and Qualifications**

This section provides the opportunity where the Respondent must provide an Executive Summary (not to exceed four (4) pages) to demonstrate how the Respondent meets the minimum qualifications; and demonstrates their experience and qualifications as required in this RCS. The respondent’s submission will allow the panel to evaluate its qualifications and experience to provide vending services. *(See Section I.A)*

**Tab 4 – Concepts**

This section provides the opportunity for the Respondent to provide an Executive Summary (not to exceed six (6) pages) to include information about the type and variety of selections to be offered in each unit at each location, type of brand offered, whether a micro market concept is included and the range of pricing.

Respondent must provide complete detail of its product offerings and pricing in each unit at each location when submitting Response and keep within the page guidelines as stated in Form of Response guidelines, Section III.D. If this detailed submission exceeds the six (6) page limit specified above, Respondent may insert additional pages as an attachment, not to exceed the seventy-five (75) page double-sided limit. *(See Section III.D)*
**Tab 5 – Management/Operations Plan**

1. This section provides the opportunity for the Respondent to share its Management Plan for its overall vending services operations; Respondent’s Customer Service Approach; and Operations and Maintenance Plan. This section is not to exceed two (2) pages.

2. If a micro market concept is proposed, Respondent must provide detail as to how it will meet ADA Compliance and its ADA Strategy for a micro market concept design. (Reference [https://www.ada.gov/2010ADAstandards_index.htm](https://www.ada.gov/2010ADAstandards_index.htm))

**Tab 6 – Marketing Plan**

This section allows the Respondent to demonstrate its marketing of the vending services and the use of any promotions to attract customers to generate revenue. This section is not to exceed two (2) pages.

**Tab 7 – References**

Respondent shall furnish the names, addresses, and telephone numbers of a minimum of three (3) firms or corporations for which the Contractor is currently furnishing or has furnished, vending services within the last five (5) years for providing vending services. Use Attachment D to provide references and contact information.

**F. RESPONSE EVALUATION**

Responses will be reviewed for documentation of minimum qualifications, completeness, and adherence to the RCS requirements.

The Aviation Department reserves the sole right to determine the sufficiency of qualifications and experience of all Respondents.

**G. EVALUATION CRITERIA**

The Evaluation Panel may recommend one (1) or more Responses that is the best value and most advantageous to the City based on the evaluation criteria. See City of Phoenix Administrative Regulation 3.10.

Responsive and responsible Responses will be evaluated based on the following criteria:

**Experience and Qualifications of Respondent (0 - 250 points)**

1. Number of years and type of experience providing vending services.
2. Locations where vending services offered and length of time.
3. Number of years and experience providing vending services to non-public, secure locations (i.e. airports, prisons, etc.).

**Concepts (0 - 250 points)**

1. Type and variety of selections offered
2. National brands vs. Generic brands
3. Micro market concept
4. Range of prices or price list / Including pricing for micro markets, if applicable
Management/Operations Plan (0 - 250 points)
1. Method to monitor machines and respond to issues (machines not working), including customer complaints and refund requests
2. Use of technology; and if receipts issued
3. Stocking and delivery
4. Inventory and Cash Controls
5. Equipment cleaning and maintenance plan
6. Reporting method to include format of report and detailed item reporting (as required per section 3.3.2 of the Lease)

Marketing Plan (0 - 150 points)
1. Type of marketing to be used (i.e. flyers, word of mouth, Facebook, Instagram, Twitter etc.)
2. Promotions such as frequent buyer programs

References (0 – 100 points)
1. Respondent must furnish three (3) professional client references from firms or corporations for which the Respondent is currently furnishing or has furnished, vending services within the last five (5) years.
2. Respondent must demonstrate satisfactory past performance of contracts of similar size, scope, and complexity. The City is only allowed as a reference if Respondent does not have a contract(s) with other firms or corporations.
3. Please provide the following for each reference: name of firm or organization, name and title of the contact person, address, telephone number, email address, and dates service provided.

H. EVALUATION PANEL(S)
The Deputy Aviation Director will appoint an evaluation panel or panels to evaluate all responsive Responses and to recommend the Respondent(s) to be awarded the contract(s) resulting from this RCS. The Deputy Aviation Director may accept the evaluation panel’s recommendations and submit it to the Phoenix City Council for approval, or may reject the recommendations. If only one Response is responsive to a single contract opportunity, then the Aviation Director shall have the discretion to determine whether the evaluation panel or staff will evaluate that responsive Response.

The evaluation panel may interview the Respondents or may evaluate the Responses solely on the materials submitted by the Response deadline. The evaluation panel may interview all Respondents or create a short list of Respondents to interview. A short list of Respondents, when used, is a list of Respondents identified by the evaluation panel as those most likely to be successful based on this RCS’s evaluation criteria. The evaluation panel may consider information from the interviews that clarifies the written Responses. Respondents are prohibited from modifying its offer by providing any new information, supplements, or electronic data not originally contained within the Respondent’s original response at the time of the interview.
The evaluation panel will score the Responses by consensus based on the evaluation criteria. The City will maintain the consensus scoring for each criterion for each Respondent. The City does not retain individual panelists’ scores.

I. DISCUSSIONS

The procurement officer may hold Discussions, based on the evaluation panel's direction, with Respondents submitting a reasonably susceptible Response. Discussions must be conducted in writing. In conducting Discussions, the procurement officer may not disclose any information derived from Responses submitted by competing Respondents. The procurement officer may request Response revisions from all Respondents with whom Discussions were held. The procurement officer will facilitate the evaluation of any revisions to the revised Responses resulting from the Discussions.

J. NEGOTIATIONS

At the end of the applicable evaluation process, the evaluation panel will rank the Respondents based on the evaluation criteria set forth in the solicitation. If advantageous to the City, the City may enter into negotiations with the highest ranked Respondent. If negotiations between the City and the highest ranked Respondent are unsuccessful, then the City reserves the right to engage in negotiations with the next highest ranked Respondent. This process of negotiating with each Respondent beginning with the highest ranked Respondent may be followed until the negotiations are successful or the RCS is cancelled. In conducting negotiations, the procurement officer will not disclose any information derived from Responses submitted by competing Respondents. In no event should such negotiation change time restrictions or requirements set forth in this RCS.

K. GOOD STANDING

Any Respondent that currently contracts with the City must be in good standing for its Response to be considered responsive. For purpose of this RCS, good standing refers to compliance with all Contractual provisions, including payment of financial obligations to the City.
IV. GENERAL TERMS AND CONDITIONS

A. Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual offerors or Respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any member of City Council, the City Manager, any Deputy City Manager, or any Department Director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting Contract(s) are awarded or all offers or Responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. As long as the solicitation is not discussed, potential or actual Respondents may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process.

Potential or actual Respondents may discuss their Response or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, conducted in person at 200 W. Washington St., Phoenix, Arizona, 85003, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Respondent(s), the City Manager and/or City Manager’s Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and Responses, any direction on the selection from the City Manager and/or City Manager’s Office and Department Head (or representative) to the evaluation panel or selecting authority must be provided in writing to all prospective or actual Respondents.

This policy is intended to create a level playing field for all Respondents, assure that contracts are awarded in public, and protect the integrity of the selection process.

RESPONDENTS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.

After official notice of disqualification is received from the City, the potential or actual Respondent may follow the Protest process, unless the solicitation is cancelled without notice of intent to reissue.

To “discuss” means any contact by the Respondent, regardless of whether the City responds to the contact. Respondents that violate this policy shall be disqualified until the resulting Contract(s) are awarded, or all offers or Responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the Contract, as long as the City cancels with a statement that the City will reissue the solicitation.
B. **Equal Opportunity**

The City extends to each individual, firm, vendor, supplier, Contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages the utilization of small and/or disadvantaged businesses throughout the life of this Contract. Respondents are encouraged to contact the City’s Equal Opportunity Department at 602-262-6790 or phoenix.gov/CERTIFY/index.html for assistance identifying small businesses.

C. **Award Recommendation**

All award recommendations will be posted at https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations. When the City posts the award recommendation, the procurement file for this RCS will be available upon request for Respondents to review. The procurement file consists of the RCS, any addenda, advertising documents, Responses, evaluation panel consensus scoring, evaluation process documents, pre-response meeting documents, Q&A, signed conflict of interest statements used in this process and confirmation of the RCS’s posting to the phoenix.gov solicitation website.

D. **Disclosure of Confidential and Proprietary Information**

All materials submitted by Respondents are the property of the City and become a matter of public record available for review pursuant to Arizona law. A Respondent may request specific information contained within its Response be treated by the procurement officer as confidential or proprietary (collectively confidential) provided the Respondent clearly labels the information “CONFIDENTIAL”. To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential.

Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Respondent as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify a Respondent in writing of any request to view any portion of its Response marked “confidential”. The Respondent will have seven (7) calendar days to obtain a court order enjoining such disclosure. If the Respondent does not provide the Procurement Officer with a court order enjoining release of the information during the designated time period, the Procurement Officer will make the information requested available for inspection.

E. **City’s Reservation of Rights**

The City may:

1. Accept or reject any or all Responses in whole or in part;
2. Cancel this RCS in whole or in part;
3. Negotiate any Response elements in a manner that does not create an unfair advantage for any Respondent;
4. Reissue this RCS with or without modification;
5. Waive any non-material defects in any Response or the procurement process; and
6. Take any other legal action deemed to be in the City's best interest.
F. City's Right to Reject a Response for Conflict of Interest

The City may reject a Response if the Respondent has a real or apparent conflict of interest disclosed in its Response or discovered from any other source. During the term of the Contract resulting from this RCS, the successful Respondent's employees may not be involved in any other Aviation-related business, including as an employee, owner, subcontractor and/or joint venture partner, partner, or consultant, which presents a real or apparent conflict of interest. All determinations regarding conflicts of interest will be made at the sole discretion of the Aviation Director, whose decision is final and is not subject to Section III (J).

G. Respondent-Incurred Costs

All costs incurred by the Respondent in connection with this RCS will be borne solely by the Respondent. Under no circumstances will the City be responsible for any costs or losses incurred by Respondent in the preparation of a Response or due to date changes.

H. City's Sole Determination of Responsiveness and Responsibility and Right to Investigate

Responses will be reviewed for documentation of minimum qualifications, completeness, and compliance with the RCS requirements. The City reserves the sole right to determine responsiveness and responsibility. Responsibility includes the City’s determination of the Respondent's integrity, skill, capacity, experience, operational and financial capability, and facilities for conducting the work to be performed.

The City’s determination as to whether a Respondent is responsible will be based on the information furnished by the Respondent, interviews (if any), any information at the City's request, information received from Respondent's references, including information about Respondent's past history, and any other sources the City deems appropriate. Award of a Contract resulting from this RCS will not be made until any necessary investigation, which each Respondent agrees to permit by submitting its Response, is made by the City as it deems necessary. A review of responsibility may occur up to Contract Award by the Phoenix City Council.

I. Respondent Certification and Affidavit

By submitting a Response, each Respondent certifies it has not paid or agreed to pay any fee or commission, or any other item of value, to any employee, official or current contracting consultant of the City contingent on the award of a Contract.

In compliance with Arizona Revised Statutes §§1-501 and 1-502(D), if the successful Respondent is a sole proprietorship or an individual, the successful Respondent must submit a completed Affidavit of Lawful Presence prior to the award of any Contract resulting from this RCS process. This affidavit is posted at https://www.phoenix.gov/Documents/lawfulpresence.pdf.

Respondents unable to comply with any required certifications or affidavits may be disqualified.
J. Protests

A. Conditions for Protest.

1. An aggrieved party may protest the contents of the RCS up to seven (7) calendar days before the Response deadline listed on page 1 when the protest is based on an alleged mistake, impropriety or defect in the RCS that is apparent. Solicitation protests under this paragraph must be submitted to the Procurement Officer. If an aggrieved party submits a protest based on an alleged mistake, impropriety or defect in the RCS, they must also submit a Response by the Response deadline listed on page 1 if they want to be considered for award of the Contract. An aggrieved party or respondent who fails to protest timely an alleged mistake, impropriety or defect in the solicitation that was apparent may not later protest that alleged mistake, impropriety or defect. Unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of a Response, regardless of filing a protest.

2. Respondents may protest an adverse determination issued by the City, regarding whether the Respondent is responsible or its Response is responsive, within seven (7) calendar days of the date the Respondent was notified of the adverse determination.

3. Respondents may protest an award recommendation within seven (7) calendar days of it being posted at https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations, if the Respondent can establish that it had a substantial chance of being awarded the Contract and will be harmed by the recommended award. The date the Award Recommendation Notice is posted shall initiate the seven (7) day Protest Period. That is, the date the Notice is posted shall be day zero (0), with the following day counted as day one (1) and so forth through Close of Business (5:00 PM MST) on calendar day seven (7).

4. In accordance with regulations, in the event the aggrieved parties or Respondents submit a public records request after receiving the applicable award recommendation notice but prior to the deadline to file a protest, the procurement officer will extend the deadline one (1) day for every day between the day the City receives the public records request and the day the public records are produced, the request is otherwise addressed by the City or a court of competent jurisdiction enjoins disclosure of the requested records.

B. Submitting a Protest

1. Protests received after the protest due dates set forth in this RCS will not be considered, except for Good Cause.

2. To be considered, all protests must be submitted in writing and must include:
   - RCS number and title;
   - Name, address, telephone number, and email address of the protester;
   - Detailed statement of the legal or factual basis of the protest including any copies of relevant documents;
   - The relief requested;
   - Signature of the protester or its authorized representative; and
   - A Respondent protesting an award recommendation must also establish in its protest that it had a substantial chance of being awarded the Contract and will be
harmed by the recommended award.

3. The City has the authority to review, decide, and settle protests.

4. Deadlines in the RCS are not required to be postponed solely on the basis of receiving a solicitation protest. Only upon written notice from the Procurement Officer will a solicitation deadline be postponed, at the City’s sole discretion.

5. The Aviation Director shall issue a protest decision in writing within fourteen (14) days of the receipt of the protest, unless an extension is granted. The decision will state the reason for the protest decision and advise the aggrieved party of its right to appeal.

6. The Aviation Director will not review any supplements or amendments to a Respondent’s original protest or any additional protests submitted by the same Respondent. The Procurement Officer will provide the recommended Respondent copies of award recommendation protest(s) and the Aviation Director’s written decision.

K. Execution of the Contract

The City will send the final contract to the recommended Respondent. Within thirty (30) days from the date the Contract was sent, the recommended Respondent must sign and submit the final contract to the City. If the City does not receive the signed contract and all other required documentation from the recommended Respondent within thirty (30) days, the City may request City Council approval to award the Contract to the next highest qualified Respondent.

If the recommended Respondent is subject to regulation by the Arizona Corporation Commission (ACC), it must be authorized to transact business in Arizona and be in good standing with the ACC at the time it signs the Contract.
### ATTACHMENT A

#### Locations/Vending Service Types/Concepts

<table>
<thead>
<tr>
<th>Location</th>
<th>Cumulative Number of Vending Machines</th>
<th>Type of Vending Service Desired</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 DVT</td>
<td>1</td>
<td>Drink</td>
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<td>2</td>
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<td></td>
<td>3</td>
<td>Snack</td>
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<tr>
<td>2 DCS</td>
<td>4</td>
<td>Drink</td>
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<td></td>
<td>5</td>
<td>Snack</td>
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<tr>
<td>3 F&amp;S - Kitchen</td>
<td>6</td>
<td>Drink</td>
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<td></td>
<td>7</td>
<td>Drink</td>
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<td>8</td>
<td>Drink</td>
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<td></td>
<td>9</td>
<td>Snack</td>
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<td>4 GYR</td>
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<td>Drink</td>
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<tr>
<td></td>
<td>11</td>
<td>Snack</td>
</tr>
<tr>
<td>5 OPS - Gate D</td>
<td>12</td>
<td>Drink</td>
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<tr>
<td></td>
<td>13</td>
<td>Snack</td>
</tr>
<tr>
<td>6 OPS - Break Room</td>
<td>14</td>
<td>Drink</td>
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<tr>
<td></td>
<td>15</td>
<td>Drink</td>
</tr>
<tr>
<td></td>
<td>16</td>
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<tr>
<td></td>
<td>17</td>
<td>Cold Food</td>
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<tr>
<td>7 RCC</td>
<td>18</td>
<td>Drink</td>
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<tr>
<td></td>
<td>19</td>
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<td>20</td>
<td>Snack</td>
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<tr>
<td></td>
<td>21</td>
<td>Cold Food</td>
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<tr>
<td>8 T2 - Tug Drive</td>
<td>22</td>
<td>Drink</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>Snack</td>
</tr>
<tr>
<td>9 T3 - Comm Center</td>
<td>24</td>
<td>Drink</td>
</tr>
<tr>
<td></td>
<td>25</td>
<td>Snack</td>
</tr>
<tr>
<td>10 T3 - Mechanical</td>
<td>26</td>
<td>Drink</td>
</tr>
<tr>
<td>11 T4 - Custodial BR</td>
<td>27</td>
<td>Drink</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>Drink</td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>Snack</td>
</tr>
<tr>
<td>12 T4 - S2 Basement</td>
<td>30</td>
<td>Drink</td>
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<td>31</td>
<td>Drink</td>
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<td>Drink</td>
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<td>Drink</td>
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<tr>
<td></td>
<td>35</td>
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<td></td>
<td>36</td>
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<tr>
<td></td>
<td>37</td>
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</tr>
</tbody>
</table>
Maps of Vending Locations

1: Deer Valley Airport (BVT)
2: Design & Construction (DCS)
3: Facilities & Services (F&S) - Kitchen
5: Operations (OPS) - Gate D
6: Operations (OPS) - Break Room
8: T2 Tug Drive
9: T3 - Communications Center
10: T3 - Mechanical
11: T4 - Custodial
12: T4 - S2 Basement
13: Aviation Dept Office Bldg
7: Rental Car Center (RCC)
4: Goodyear Airport (GYR)

Pre-Security Locations
Post-Security Locations
Maps of Vending Locations - Continued

City of Phoenix Aviation Department Office Building

Vending Service space (5 units or potential micro market concept opportunity)
ATTACHMENT C

Pictures of Current Vending Service Types/Concepts
Pictures of Current Vending Service Types/Concepts – Continued
Pictures of Current Vending Service Types/Concepts – Continued
BUSINESS REFERENCES

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three (3) firms or corporations for which the Contractor is currently furnishing or has furnished, vending services within the last five (5) years.

Company Name: ________________________________

Contact Persons Name & Title: ________________________________

Address: ________________________________

Telephone Number: ________________________________

Email Address: ________________________________

Dates Service Provided: ________________________________

Company Name: ________________________________

Contact Persons Name & Title: ________________________________

Address: ________________________________

Telephone Number: ________________________________

Email address: ________________________________

Dates Service Provided: ________________________________
BUSINESS REFERENCES CONTINUED

Company Name: _____________________________

Contact Persons Name & Title: _____________________________

Address: ____________________________________________

Telephone Number: _________________________________

Email address: _________________________________

Dates Service Provided: _____________________________
This form must be signed and submitted to the City and all questions must be answered or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

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<th>Last</th>
<th>Suffix</th>
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2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

4. List any individuals(s) or entity(ies) that are partners, parent, joint venture or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking this the resulting contract. If none, indicate N/A.
7. Disclosure of conflict of interest:

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a "conflict of interest" issue under City Code Section 43-34?

"An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award."

☐ I am not aware of any conflict(s) of interest under City Code Section 43-34.
☐ I am aware of the following potential or actual conflict(s) of interest:

Notice Regarding Prohibited Interest in Contracts

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 to 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 to 38-511? (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

☐ I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 to 38-511.
☐ I am aware of the following conflict(s) of interest:

Acknowledgements

Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

☐ I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 43-34 & 43-36, by respondents, or their agents, will lead to disqualification.

Fraud Prevention and Reporting Policy

I acknowledge that the City has a fraud prevention and reporting policy in Administrative Regulation 1.2, available on the City’s Phoenix.gov website. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud and will investigate any suspected or actual fraud.

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete. Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

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<tr>
<th>SIGNATURE</th>
<th>DATE</th>
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<tr>
<th>COMPANY (CORPORATION, LLC, ETC.) NAME and DBA</th>
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</table>
ATTACHMENT F

Notarized Affidavit

Assurances

The undersigned Respondent hereby submits to the City of Phoenix (City) the enclosed Revenue Contract Solicitation Response (Response) based upon all terms and conditions set forth in the City's Revenue Contract Solicitation (RCS) and referenced materials. Respondent further specifically agrees hereby to provide services in the manner set forth in the Response submitted by Respondent.

The undersigned Respondent acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on Respondent's submitted information and the representation that Respondent has the capability to successfully undertake and complete the responsibilities and obligations submitted in its Response and in the resulting Contract.

2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Respondent.

3. Respondent has read and fully understands all the provisions and conditions set forth in the RCS documents, upon which its Response is based.

4. The forms and information requested in the RCS are complete and made part of Respondent's Response. The City is not responsible for any Respondent errors or omissions.

5. This Response may be withdrawn by requesting such withdrawal in writing at any time prior to the Response deadline but may not be withdrawn after such date and time.

6. The City reserves the right to reject any and all Responses and to accept the Response that, in its judgment, will provide the best quality of service to the City.

7. This Response is valid for a minimum of 120 days subsequent to the RCS Response deadline.

8. All costs incurred by Respondent in connection with this Response will be borne solely by Respondent. Under no circumstances will the City be responsible for any costs associated with Respondent's Response or the RCS process.

9. Respondent has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RCS process.

10. The contents of this Response have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this Response.

11. To the best of the Respondent's knowledge, the information provided in its Response is true and correct and neither the undersigned Respondent nor any Partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.
Legal Status

1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. (Attach additional pages as necessary) Yes ☐ No ☐

2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City? If "Yes," provide details. (Attach additional pages as necessary) Yes ☐ No ☐

3. Are there any pending liens, claims or litigation in excess of $1,000,000 involving Respondent? If "Yes," provide detailed information regarding complaints about how the quality of Respondent's services was unsatisfactory. (Attach additional pages as necessary) Yes ☐ No ☐

4. Has the Respondent been involved in any lawsuits in the past 5 years? If "Yes," provide list.. (Attach additional pages as necessary) Yes ☐ No ☐

5. Have any of the Respondent’s contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years? If "Yes," provide name, location, and date of the contract(s). (Attach additional pages as necessary) Yes ☐ No ☐

6. Has the Respondent, or any corporation or other entity that has, directly or indirectly, a controlling interest in the Respondent, or any subsidiary of the Respondent or other entity in which the Respondent has a controlling interest or any of the Respondent’s principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. (Attach additional pages as necessary) Yes ☐ No ☐

7. Respondent intends to operate the business as a (check one):
   Corporation ☐ General Partnership ☐ Member-Managed LLC ☐
   Joint Venture ☐ Limited Partnership ☐ Manager-Managed LLC ☐
   Sole Proprietorship ☐ Limited Liability Partnership ☐
   Other ____________________________________________

References (Please Complete Attachment D)

Respondent shall furnish the names and contact information for 3 clients for whom the Respondent is furnishing or has furnished services similar to those described in this RCS. Do not list City of Phoenix employees or officials as references.

1. Company and Reference Name: ________________________________________________
   Address:_____________________________________________________________________
   Telephone:________________________ Email:_____________________________________

Vending Services AVN RCS 17-006  Attachment F-2
2. Company and Reference Name: ________________________________
   Address: ________________________________________________________________________________
   Telephone: ____________________ Email: ________________________________

3. Company and Reference Name: ________________________________
   Address: ________________________________________________________________________________
   Telephone: ____________________ Email: ________________________________

**Signature(s)**

Name of Joint Venture Partner (If applicable): ________________________________
Printed Name of Authorized Person: ________________________________
Title: ________________________________
Business Address of Respondent: ________________________________________________________________________________
Telephone: ____________________ Email: ________________________________
Signature of Authorized Person: ________________________________

Name of **Respondent’s** Company (Legal Name): ________________________________
Printed Name of Authorized Person: ________________________________
Title: ________________________________
Business Address of Respondent: ________________________________________________________________________________
Telephone: ____________________ Email: ________________________________
Signature of Authorized Person*: ________________________________

*Must be signed by an individual authorized to contractually bind the respondent’s company.

**Notarized**

State of _________________ County of _________________

This affidavit was subscribed and sworn to before me this ______ day of ________, 20____ by

__________________________________________________________
(Full name of the affiant).

Notary Public (signature)

Affix Notary Seal
ATTACHMENT G

CITY OF PHOENIX

VENDING SERVICES LEASE

between

THE CITY OF PHOENIX,
an Arizona municipal corporation

and

TBD

dba TBD
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This VENDING SERVICES CONCESSION LEASE ("Lease") is made and entered into this _____ day of ________, 2017 ("Effective Date"), by and between the CITY OF PHOENIX, a municipal corporation of the State of Arizona (hereinafter referred to as the “Lessor” or “City”), and TBD. (hereinafter referred to as “Lessee”), whose principal place of business is located at TBD.

RECITALS

1. Lessor is the owner and operator of Phoenix Sky Harbor International Airport ("Airport") in Phoenix, Arizona, including all of the land, buildings and facilities comprising the Airport, Phoenix Deer Valley Airport, Phoenix Goodyear Airport; otherwise known as the Phoenix Airport System.

2. Lessor desires to grant to Lessee the non-exclusive rights specified in this Lease and to establish the terms and conditions for the operation of Lessee’s Food and Drink Vending Services in non-public areas of the Phoenix Airport System.

3. Lessor has solicited responses from Vending Service providers and Lessor has negotiated with Lessee to operate Food and non-alcoholic Drink Vending Services for the convenience and use by Aviation-related employees within the Phoenix Airport System. The vending units will not serve the general public.

4. On (date), Phoenix City Council approved S- _____ ordinance authorizing this lease.

NOW, THEREFORE, in consideration of the foregoing recitals, which the parties acknowledge are a part of this Lease, and of the following terms and conditions which are agreed by and between the parties as follows:
SECTION 1
TERM

SECTION 1.1 – Primary Term

1.1.1 The Primary Term of this Lease shall commence on the Effective Date for three years and expire on ____________, 2020, unless this Lease is Terminated earlier as hereinafter provided. If Lessee begins all operations on a day other than the first day of the month, all monetary obligations under the Lease will be prorated for the remainder of the month.

There are two, one (1) year renewal options. The option to extend this Lease is at the sole discretion of the Aviation Director and will be exercised if it is in the City’s best interest.

SECTION 2
PREMISES AND PRIVILEGES

SECTION 2.1 - Premises

2.1.1 Lessor hereby leases to Lessee those Premises shown on the list and map(s) attached to this Lease and denoted as “Premises and Concepts” in Exhibit 1 for food and non-alcoholic vending services space. Lessor grants Lessee the right of ingress and egress to and from the Premises on public access roadways, sidewalks and areas of the Airport.

2.1.2 Lessee leases the Premises after a full and complete examination of the Premises and the title, and has full knowledge of the present uses and non-uses. Lessee accepts the foregoing in the condition or state in which they now are “as-is” without any representation or warranty, express or implied in fact or by law, by Lessor and without recourse to Lessor as to the title, nature, condition or usability or use to which the Premises may be put. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises other than those expressly provided in this Lease. Lessee assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Premises.

SECTION 2.2 - Rights and Privileges

2.2.1 Lessor hereby grants to Lessee a nonexclusive right to engage in vending services on the Premises, as identified in Exhibit 1, a commercial activity defined and regulated by this Lease and the Phoenix City Code. Lessee shall use the Premises for no other purpose. Lessor may grant rights to others to conduct the same or similar operations for the Phoenix Airport System.

2.2.2 It is the objective of Lessor and Lessee that each vending services unit maintains a distinctive quality. Any modifications to Exhibit 1 must be approved in writing, in advance, by Lessor.

2.2.3 The Lessor reserves the right during the term of the Lease to require modification including changes to food and drink items offered.
2.2.4 Lessee agrees one hundred percent (100%) of the Premises shall be devoted to Lessee’s operation of the vending service concepts listed in Exhibit 1. Lessee’s failure to comply with Exhibit 1 will be grounds for termination of this Lease. Such compliance by Lessee shall be at the sole determination of Lessor.

2.2.5 The rights and privileges described in this Section may be modified by Lessor to implement the purpose and intent of this Lease.

2.2.6 Lessee shall have the right and obligation to construct Leasehold Improvements to the Premises for use in its vending service units in accordance with Section 7.

2.2.7 As a condition of its right to occupy the Premises, Lessee shall ensure the operation of any wireless access point does not cause interference with existing communication users, including, without limitation, aviation-related operations and equipment at the Phoenix Airport System, the operation of any existing wireless users operating at the Phoenix Airport System, and the Airport’s own radio systems. If the operation of Lessee’s wireless access point causes any interference to any existing users, Lessee shall take all steps necessary to remove the cause of the interference. Lessee shall cooperate with the Lessor and any necessary third parties to identify and eliminate the cause of the interference. If Lessor determines, in its sole discretion, that Lessee’s wireless access point or signals being transmitted by means of the wireless access point, are the cause of any interference, Lessor may direct Lessee to immediately cease operation of all or any portion of Lessee’s wireless access point, or otherwise take action to eliminate the interference at sole cost to Lessee.

2.2.8 Lessee may participate in the Airport’s Employee Parking Program, in accordance with all rules and regulations promulgated by the Aviation Department, and Phoenix City Code. Lessee shall be responsible for any parking fees for anyone enrolled under Lessee’s account.

SECTION 3

RENT

SECTION 3.1 - Gross Sales

The term “Gross Sales,” as used herein, shall be construed to mean the aggregate amount of all sales made and services rendered at or from the Premises, and any other revenues of any type arising out of or in connection with Lessee's operation under this Lease on the Premises, regardless of when or where the order therefore is received, where performed by Lessee or its Partners, from the Premises for cash or credit or otherwise, of every kind, name, and nature, regardless of when or whether collected or not, as if the same had been sold for cash, or the fair and reasonable value thereof, whichever is greater. Only the following shall be excluded or deducted from the computation of Gross Sales:

3.1.1 Any and all transaction privilege taxes (sales taxes), excise taxes or related taxes upon or passed through to customers and collected by Lessee on such sales.

3.1.2 Receipts from the sale or trade-in value of any furniture, fixtures or equipment used upon the Premises and owned by Lessee.

3.1.3 The value of any merchandise, supplies or equipment exchanged or transferred from or to Lessee’s other business locations where such exchanges or transfers are not
made for the purpose of avoiding a sale that otherwise would be made at or from the Premises.

3.1.4 Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers.

3.1.5 Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by a customer to and accepted by Lessee, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

3.1.6 The amounts of cash or quantity discounts received from sellers, suppliers and manufacturers.

3.1.7 Expenses charged to customers that are paid by Lessee for the shipment of approved vending goods sold as a convenience to customers.

3.1.8 The amounts of any gratuities paid or given by customers to Lessee’s employees.

3.1.9 Receipts from the sale, at cost, of uniforms or clothing to Lessee’s employees where such uniforms or clothing are required to be worn by such employees.

3.1.10 Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Sales.

SECTION 3.2 - Annual Rent

3.2.1 Immediately upon Lessee’s receipt of monies from the operation of the vending services herein authorized, the portion of monies belonging to Lessor under the terms of this Lease shall immediately be vested in and become the property of Lessor, and Lessee shall be responsible for the monies until the same are delivered to Lessor.

3.2.2 For purposes of this Lease, “Lease Year” means the twelve-month period beginning on January 1st and ending December 31st. “Prorated Lease Year” means the period from when Lessee begins operation or December 31st, whichever occurs first, until the beginning of the first Lease Year, and the period from the last Lease Year until termination.

3.2.3 Lessee, for and in consideration of the use of the Premises, facilities, rights and privileges granted hereunder, hereby covenants and agrees to pay Lessor without notice, and free from any and all claims, deductions or set-offs against Lessor, as rent:

   a. For the Term, Lessee shall pay only a Percentage Rent of annual Gross Sales as follows: twenty percent (20%) for pre-packaged snacks & bottled/canned beverages sold from a vending unit; thirteen percent (13%) for food and beverages sold in a market concept (if applicable).

3.2.4 The termination of this Lease, by the lapse of time or as otherwise provided herein, shall not relieve Lessee of its obligation to pay any rent or other charges that have accrued during the period in which this Lease is in effect or Lessee has had the benefit of the Premises.

SECTION 3.3 - Percentage Rent Payments and Reports

3.3.1 In computing Percentage Rent to be paid by Lessee, the first reporting period
shall commence on the date Lessee opens for business and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

3.3.2 Lessee shall, within twenty (20) days after the close of each month, furnish Lessor a detailed statement of Gross Sales and any deductions from Gross Sales, from each individual vending service unit for the preceding month prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by a responsible financial officer of Lessee. These Gross Sales reports must show such data and breakdown for Lessee and Lessee’s Partners, including ACDBEs and small businesses, including an itemized list identifying all Gross Sales by Percentage Rent category purchases of Goods & Services and any other type of reporting as may be required by Lessor, and shall be accompanied by Lessee’s payment of additional rent that may be due hereunder based on the application of Percentage Rent, plus all applicable taxes. Lessor may require changes to the format of these reports at any time.

3.3.3 By March 31st of each Lease Year, Lessee is required to submit to Lessor an annual accounting statement of Gross Sales and Percentage Rent for each vending service unit, including all Partners, ACDBEs and small businesses in accordance with GAAP. This statement must be prepared and audited by an independent Certified Public Accountant (CPA), in accordance with Generally Accepted Auditing Standards (GAAS). This requirement applies to prorated Lease Years at the start and end of the Lease.

The purpose of the audit is to determine if the Gross Sales and Percentage Rent reported accurately reflect the rents due and paid to Lessor for the Lease Year for each vending service unit.

SECTION 3.4 – Rent Remittance

Rent payments shall be made payable in check form to the Aviation Department’s lockbox at Aviation Department, City of Phoenix, P.O. Box 29110, Phoenix, Arizona 85038-9110. In the event technological advances make point of sale Gross Sales reporting and payment transfers more economically feasible, Lessor reserves the right to revise how payment remittances are made. Any and all equipment and transmission changes necessary to accomplish the change in the reporting and/or remittance process will be the responsibility of Lessee.

SECTION 3.5 – Miscellaneous Charges

Lessee agrees it is responsible for all miscellaneous charges for services rendered by the Lessor to support the Premises and Food and Drink Vending Service operations. These charges may include, but are not limited to: security badging for employees, City inspections for Lessee’s construction projects or improvements, parking, and work orders.

SECTION 3.6 - Delinquent Rent and Charges

Without waiving any other right or action available to Lessor in the event of default in payment of rents or charges hereunder, late rent or charges are subject to delinquent fees as
defined in Section 4-7 of the Phoenix City Code, currently eighteen percent (18%) per annum and as may be amended, beginning on the date the rent or charges were due.

SECTION 3.7 - Late Statements or Reports

If Lessee is delinquent for ten (10) or more days in furnishing Lessor any monthly statements or reports required under this Lease, Lessee shall pay one hundred dollars ($100) per late statement or report to Lessor as liquidated damages for the additional administrative costs incurred by Lessor in processing and reviewing delinquent statements or reports. The parties agree this is a fair and reasonable estimate of Lessor's costs incurred in processing a delinquent monthly statement or report.

SECTION 3.8 - Books and Records

3.8.1 For the five (5) most recent years of the term hereof, and until all claims by Lessor for payments hereunder shall have been fully ascertained, fixed and paid, or until three (3) years after expiration or earlier termination of this Lease, whichever is later, Lessee shall keep, in accordance with GAAP and GAAS, separate and accurate records of Gross Sales showing in detail all business done or transacted in, on, about, from, or pertaining to the Premises. Lessee shall enter all receipts arising from such business in regular books of accounts kept on the Premises for that purpose, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. It is the intent and purpose of the foregoing provisions that Lessee shall keep all such records available for inspection by Lessor as will enable Lessor to ascertain and determine, accurately and clearly, the amount of money payable to Lessor hereunder, and the exact share of Gross Sales billed and/or received by Lessee under this Lease.

These records shall include, but are not limited to: chart of accounts, general ledger, daily business reports, and original or copies of rent agreements for all Airport-related transactions. Lessor prefers the records be kept in Phoenix. If Lessee elects not to maintain its records in Phoenix, then upon Lessor’s request or in the event of an audit, it shall either: 1) pay for all expenses associated with delivering the records to the address of the auditors; or 2) pay for reasonable travel expenses for the auditors to have the audit conducted at Lessee’s specified location, including an administrative fee of fifteen (15%) percent of the actual costs of the audit.

3.8.2 Lessor may audit Lessee’s books and records at any time to verify compliance with this Lease. Within ten (10) days of Lessor’s request, during normal business hours, Lessee will make available for inspection and review to Lessor’s employees, agents, and contractors all of its records, which shall be maintained in accordance with GAAP and GAAS, showing in detail all business conducted pursuant to this Lease.

The records requirements of this Section shall extend to any of Lessee’s subsidiaries, Partners, and subleases.

Lessor may use its own staff to perform audits under this Section, or may engage an independent CPA to perform the audits. If an audit reveals that Lessee has understated its Gross Sales by two percent (2%) or more, the entire expense of the audit shall be borne by
Lessee. Lessee shall immediately pay any additional amounts due to Lessor in compliance with Section 3.6.

3.8.3 Lessee shall install and use, or cause to be installed and used at each vending service unit, cash registers, sales slips, invoicing machines and other automatic accounting equipment required to properly and accurately record the gross revenues on all sales, by type and location, services, and other business transactions. The devices shall be equipped with a transaction log with auditing capabilities that track and store each transaction that is accumulated through the vending service unit. The transaction history shall be consecutive, and cannot be interrupted or restarted without the proper audit logs to support the interruption in numerical sequence. Lessee shall provide evidence of such internal controls documenting complete recording of all receipts for all operating hours. All transactions recorded on the devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance.

3.8.4 Lessee shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management’s authority, and that the financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures.

3.8.5 It is agreed that examination of the books, ledgers, journals and accounts of Lessee will be conducted in accordance with GAAP and GAAS applicable in the circumstance, and that as such, the examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Lessee. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by Lessor to the entire period of reporting under examination and will be binding upon Lessee, and to that end shall be admissible in any court of law to prove any amounts due Lessor.

SECTION 3.9 – Independent Audits

If, as a result of an audit, Lessor determines that additional monies are due to Lessor, Lessee shall be notified of Lessor’s findings and invoiced for the total amounts due. Within thirty (30) days of the notice and invoice from Lessor, Lessee shall do one of the following: (1) notify Lessor in writing that Lessee agrees with Lessor’s audit findings and pay all monies due to Lessor; or (2) dispute the audit findings, in writing. Failure of Lessee to dispute the audit findings, in writing, within thirty (30) days of receiving the notice and invoice, shall constitute acceptance of the findings and waiver of the right to appeal the findings. If Lessee elects to dispute the audit findings, it shall, within ninety (90) days after providing notice to Lessor of the dispute, furnish to Lessor, at Lessee’s expense, an audit made by an independent CPA mutually agreeable to both parties. If Lessee elects to request an independent audit under this Section, and if that audit results in a finding that there is a deficiency of two percent (2%) or more of the amount payable to Lessor, then Lessee agrees to pay Lessor for the cost of Lessor’s audit and for all deficiencies and delinquent fees. Interest shall accrue from the date the delinquent payment was due under the Lease in
accordance with Section 3.6.

SECTION 3.10 – Final Audit Binding

The final audit of the independent CPA shall be conclusive upon the parties, and Lessee shall pay to Lessor, within thirty (30) days after a copy of the CPA's final report has been delivered to Lessee, the amount, if any, shown thereby to be due and owing Lessor. The failure of Lessee to make payment to Lessor within this thirty (30) day period shall constitute a material breach of this Lease and shall give cause to Lessor for immediate termination thereof.

SECTION 4
SERVICES TO BE PERFORMED

SECTION 4.1 – Vending Services

4.1.1 The Lessee is hereby granted the non-exclusive right and privilege to furnish, operate and supply thirty-seven (37) food and non-alcoholic vending service units on the Premises of the Phoenix Airport System designated for employee use. The Aviation Department shall have the right to require Lessee to add, remove, replace or otherwise change units based on employee needs or demands. Any request by the Lessee for any additions, removal or relocation of vending units shall be made in writing by the Lessee and approved in writing by the Aviation Department prior to Lessee taking such action.

4.1.2 Lessee agrees to furnish all management, labor, equipment, materials, supplies, and trained personnel which may be necessary in order to install units and provide vending services for use by the Phoenix Airport System employees on the Premises, all of which are at Lessee’s sole cost and expense.

4.1.3 Lessee shall, at its own cost and expense, operate, service and maintain the vending units in good repair, and Lessor shall have no responsibility or obligation to operate, maintain or service the vending units.

4.1.4 Lessee shall neither conduct nor permit any employee to conduct any business or commercial operation from the Premises or upon the property of the Phoenix Airport System not herein or otherwise authorized by the Aviation Director.

SECTION 5
LESSEE OPERATING STANDARDS

SECTION 5.1 - Service Standards

5.1.1 Lessor is dedicated to providing exceptional customer service and requires Lessee to operate the vending service units in an efficient, customer friendly, well-run manner to meet the needs and demands of employees. Lessee shall maintain equal or higher standards included in the proposed Implementation Plan attached as Exhibit 6 (“Implementation Plan”).

5.1.2 Lessee shall conduct its vending service operations in a proper business-like
manner so as not to disturb or be offensive to surrounding employees and operations. Lessee shall not solicit business anywhere at the Airport, except within the Premises.

5.1.3 Lessor may monitor, test, or inspect the services of Lessee at any time through the use of commercially reasonable means that do not unduly interfere with Lessee’s vending service operations.

5.1.4 Failure to adhere to the established response times will result in an inconvenience to customers. The parties agree the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred by the customers and Lessor for the specified breaches of the foregoing operating standards. Therefore, for each cited occurrence/violation of this Section, Lessor may impose liquidated damages in the amount of fifty dollars ($50.00).

a. Failure to service vending machines weekly; or a mutually agreed upon time.
b. Failure to supply refunds within two days or request; or a mutually agreed upon time.
c. Failure to respond to request for vending machine maintenance/repairs within 24 hours of request; or a mutually agreed upon time.

5.1.5 If any of Lessee’s Partners fail to maintain vending service operations in compliance with this Lease, Lessee shall operate the vending service unit or vending service units to maintain compliance.

5.1.6 Lessee shall be responsible for escorting all unbadged Partners, contractors and any invitees to post-security locations, twenty-four (24) hours a day, seven (7) days a week.

5.1.7 Processing of payments from customers shall be prompt. Receipts (when applicable) shall be properly itemized, reflect precisely the actual sale of goods and date of sale, and list individual prices, taxes and totals.

5.1.8 Lessee shall accept at least three (3) major credit cards for any purchase.

5.1.9 Lessee is responsible for ensuring all debit and credit card transactions are conducted in accordance with all applicable laws and in compliance with payment card industry standards.

5.1.10 Except as otherwise expressly agreed by Lessor, Lessee shall operate the designated vending services twenty-four (24) hours a day, seven (7) days a week.

SECTION 5.2 - Employee Standards

5.2.1 Lessee shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service requirements of this Lease. Each employee shall: (1) be clean, neat, free from offensive body odor, professional, courteous, friendly, and not wear excessive amounts of jewelry, perfume, or cologne; (2) wear Lessor-approved uniforms and clearly display an airport security identification badge showing the names of the employee and employer at all times while at the Airport. If an employee is found within a Security Identification Display Area (SIDA) without an Airport security identification badge clearly displayed, Lessee shall discipline, and, if necessary, discharge, the employee.
SECTION 5.3 - Management

5.3.1 The operation and maintenance of vending service units operated by Lessee shall be under the direct supervision of trained, qualified, and experienced managers employed by Lessee. Managers shall be authorized to accept any notice required or allowed by this Lease, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the vending service units. Managers shall be available during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager.

5.3.2 Lessee must identify the General Manager ("GM") to be assigned to the oversight of vending service operations on the Premises including those vending service units operated by Lessee’s Partners. The GM is the primary individual responsible to fulfill Lessee’s obligations under the Lease and is the primary point of contact for interaction with Lessor. The GM should be available twenty-four (24) hours a day, seven (7) days a week for Lessor to communicate any challenges and/or emergencies. If the GM is not available, Lessee shall provide a name and telephone number of a manager who is available twenty-four (24) hours a day, seven (7) days a week and able to make decisions on Lessee’s behalf. The GM assigned under this Lease must be fully qualified. Lessee shall submit and maintain an updated organizational chart on file with Lessor at all times. At any time hereafter Lessee desires to change the GM while performing under the Lease, Lessee shall submit the qualifications of the new GM in writing to Lessor for prior approval. Lessor reserves the right to reject the requested change.

SECTION 5.4 - Sanitation, Hygiene, and Cleanliness

5.4.1 Lessee shall provide a complete and sanitary handling of all garbage and recyclables generated as a result of vending services on the Premises, and shall provide for its timely removal to the central collection point provided by Lessor. At no time shall Lessee accumulate garbage or recyclables outside the Premises or within passenger view.

5.4.2 Boxes, cartons, barrels, or other conveyance items shall be disposed of promptly by Lessee.

5.4.3 Lessee shall retain within each vending service unit, and available upon Lessor’s request, all equipment servicing schedules, maintenance logs and invoices documenting any and all routine inspections, services and cleanings of any equipment including, but not limited to: fire suppression equipment inspections and pest control services.

5.4.4 Lessee shall provide for Lessor’s approval a schedule for the routine inspections, services, and cleanings of vending service units. The schedule shall be updated with Lessor when changes are made. Lessor reserves the right to add items as necessary to ensure Lessee is conducting regular and routine cleanings, inspections and maintenance for each vending service unit.

SECTION 5.5 - Deliveries

5.5.1 All designated vendor delivery vehicles must be inspected prior to entry into
secured areas of the Phoenix Airport System.

5.5.2 Authorized vendor delivery zones are located post-security on the service level of each concourse and pre-security at the East Loading Dock. Delivery zones may be changed from time to time due to Lessor’s construction activities or operational requirements. Use of the delivery zone by Lessee or Lessee’s suppliers is limited to thirty (30) minutes at any one time. Deliveries taking longer than thirty (30) minutes must be approved in advance by Lessor. At no time are deliveries allowed along curbs.

5.5.3 Lessor may issue schedules for acceptable delivery times, which may be adjusted from time to time, and from which Lessee shall not deviate without Lessor’s prior consent.

5.5.4 Lessee shall ensure items transported within the Phoenix Airport System are handled with care and packaged in covered containers that do not leak. The conveyance of items via delivery cart, dolly, Lessor-approved palette jack, or any other Lessor-approved means within the airport, shall not exceed the height of the person delivering the items as a safety precaution. In transporting items associated with Lessee’s operations to and from vending units, Lessee shall use only those delivery routes established by Lessor and shall use only carts, vehicles, or conveyances (“Delivery Carts”) that are sealed and leak-proof. Items may only be transported on Delivery Carts equipped with rubber, air-filled, polyurethane non-marking wheels. Black Wheels or other marking wheels are strictly prohibited. Delivered items must immediately be placed into the vending units and not left within the hallways or other Airport areas.

5.5.5 Deliveries are the responsibility of Lessee. Lessor shall take no responsibility or sign for any deliveries.

5.5.6 Lessor reserves the right to regulate and approve the size of all large commercial delivery vehicles to be used on the Airfield by Lessee and all of Lessee’s authorized vendors.

SECTION 6
MINIMUM SERVICE STANDARDS AND PRICING

SECTION 6.1 – Service Standards and Pricing

The following standards of service are the minimum levels acceptable to the Aviation Department for operation of the vending service units and Lessee agrees that it shall meet or exceed every such standard of service.

6.1.1 Lessee shall maintain appropriate stock levels in every vending unit on the Premises, replenish supplies as necessary and continually reassess stock levels and unit usage to determine and implement any necessary changes to drivers’ routes and restocking schedule.

6.1.2 Lessee shall provide sufficient numbers of employees necessary to efficiently and effectively operate such service and shall furnish good, prompt, and efficient service adequate to respond to all reasonable demands at the Premises.

6.1.3 Lessee shall develop and implement a system to manage and respond to incidents of units including but not limited to providing refunds for non-dispense and damaged or out of date items. Each unit shall be clearly labeled with contact phone number and instructions to follow in
those instances.

6.1.4 Lessee shall, during the term of this Lease, be qualified to do business in the State of Arizona and shall obtain and maintain all necessary business licenses and permits from Maricopa County and any other applicable governing department or agency.

6.1.5 Lessee shall provide a stock list and current price list to the Aviation Department. Lessee may add and/or remove items to/from stock at its discretion. However, Lessee shall not adjust the prices of existing stock items without prior consent of the Lessor. Lessor reserves the right to initiate changes to stock items based upon deficient sales, quality, and health or safety concerns.

6.1.6 In no event shall the price charged by Lessee exceed the price marked on the item being sold. Lessor reserves the right to conduct its own price comparison at any time.

SECTION 7
IMPROVEMENTS TO BE MADE BY LESSEE

SECTION 7.1 - Furnish and Equip Premises

7.1.1 Lessee shall provide and maintain at its own expense first-class vending service units. This includes all improvements, alterations, and fixtures necessary for the customary operation of such a business, including, but not limited to: sales counters, display cabinets, interior partitions, special lighting, fixtures, wall coverings and finishes, and all other equipment, furniture, furnishings, and supplies necessary to conduct first-class vending service units. All improvements affixed in any manner to the Premises are “Leasehold Improvements.” All non-affixed items, including cash registers, safes, racks and other furnishings and equipment are “Trade Fixtures.”

7.1.2 Lessee shall not request, nor will Lessor execute, a Landlord’s Waiver, Landlord’s Consent, or similar document that would subordinate Lessor’s interest in the Lease to any security interest or consent to Lessee’s pledge of Leasehold Improvements or Trade Fixtures to obtain financing.

7.1.3 Lessee shall maintain vending service units and Premises in “opening day” condition throughout the term.

7.1.4 The Premises will be available to Lessee as soon as reasonably practicable after the Effective Date of this Lease. Lessee agrees Lessor shall not be legally, financially, nor equitably responsible for any delays in delivering the Premises to Lessee.

7.1.5 An implementation schedule that will be provided to Lessee is an estimated schedule only and no representations, direct or implied, are made by Lessor relating to the time periods stated therein and Lessee waives any rights to rely on same for purposes of any claim against Lessor.

7.1.6 Lessee shall not use any asbestos-containing material. If Lessee or its Partners use any asbestos-laden material within the Premises, Lessee shall be responsible for removing all asbestos-laden material at its cost and in compliance with all applicable environmental laws.
SECTION 7.2 - Plans and Specifications for Leasehold Improvements

7.2.1 In accordance with Exhibit 1, Lessee shall submit Schematic Design drawings and Construction Documents for Lessor’s approval.

7.2.2 Lessor will provide written notice to Lessee once the Premises have been certified by Lessor’s engineer as available for improvement by Lessee. Upon approval of the construction documents by all appropriate City departments, Lessee shall receive a written Notice To Proceed (NTP) providing approval from Lessor’s TI Coordinator to initiate construction within the Premises.

7.2.3 All Leasehold Improvements shall be at Lessee’s sole cost and expense and shall not damage the Premises.

7.2.4 Lessor’s approval shall not constitute a representation or warranty as to conformity with the requirements of local, state, and federal laws. Lessee shall at all times remain responsible for compliance with all applicable laws. Lessor reserves the right to approve architectural and aesthetic matters for each vending service location. Lessor may reject any design submitted, and require Lessee to resubmit designs and layout proposals until they meet Lessor’s approval.

7.2.5 In the event Lessor rejects any portion of the schematic design drawings or construction documents, Lessee shall promptly submit necessary modifications and revisions. No substantial changes or alterations shall be made in any executed plans or specifications after Lessor’s initial approval, and no Leasehold Improvements or changes to Leasehold Improvements shall be made to or upon the Premises without Lessor’s prior written approval.

7.2.6 One hundred twenty (120) days after completion of any Leasehold Improvement, Lessee shall provide to Lessor two (2) sets of detailed plans and specifications of the work as completed. One (1) copy shall be produced in a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined by Lessor at the time of submittal. Upon Lessor’s request, Lessee will inspect the Premises jointly with Lessor to verify the as-built drawings.

7.2.7 Lessee shall, in the design and construction of Leasehold Improvements and operation of the Premises, comply with all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. §12101 et al., the ADA Accessibility Guidelines (ADAAG), and implementing regulations as imposed upon the owner and/or operator of public facilities.

7.2.8 Any subsequent changes, alterations or additions to constructed Leasehold Improvements or the Premises shall be subject to the prior written approval of the Aviation Director. Before commencing any such improvements, additions or alterations, Lessee shall submit plans and specifications; construction costs and engineering and architectural fees; and a construction schedule for all work, facilities and improvements to the Aviation Director. All construction shall be in accordance with the Tenant Improvement Handbook which may be amended from time to time.
SECTION 8
CLOSURE, RELOCATION, REDUCTION, EXPANSION, OR CONDEMNATION

SECTION 8.1 - Lessor’s Authority

If at any time during the term of this Lease Lessor determines it is necessary for the efficient operation of the Phoenix Airport System or a specific location, Lessor may require Lessee to close or reduce its operations. If Lessor requires Lessee to close any or all of its operation, Lessee shall vacate the Premises within ninety (90) days of receipt of closure notice, unless exigent circumstances require an earlier closure or reduction of the Premises. If Lessor requires a reduction of Lessee’s Premises, Lessee may elect to close the specific vending service unit(s) and the closure shall be treated in the same manner as if Lessor had required closure. If Lessee makes a request to relocate a specific vending service unit(s) promptly after receiving notice of a closure or reduction, Lessor will attempt to negotiate a mutually acceptable relocation within the Phoenix Airport System; but Lessee acknowledges relocation is unlikely.

SECTION 8.2 - Condemnation

This Lease shall terminate upon the filing of an action to condemn the Premises and Lessor shall be entitled to all compensation awarded in any condemnation action.

SECTION 9
JANITORIAL SERVICES

Lessee shall provide janitorial services within the Premises and along pathways to and from garbage disposal areas, as needed, to maintain safety and cleanliness standards described in this Lease. Lessee shall ensure routine floor cleaning of back-of-house service ways and common areas will occur as needed and that no vending service-generated garbage is tracked onto the surrounding flooring. Lessee’s responsibility includes the immediate cleaning of any flooring soiled by its Vending Service operations.

Lessee-provided janitorial services must be provided equal to or greater than the standards of cleanliness and appearance required by Lessor for vending service areas. To maintain high standards throughout the Phoenix Airport System, Lessor shall have the right to perform such services for Lessee in the event of Lessee’s failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish; provided, however, that Lessor, before commencing janitorial services within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.
SECTION 10
MAINTENANCE OF PREMISES

SECTION 10.1 – Maintenance

10.1.1 Obligations of Lessor: Lessor shall, at its expense, maintain vending service areas in good condition, including the ventilating and air conditioning equipment, electrical, fire suppression where applicable, up to the leasehold of each vending service unit(s) location.

10.1.2 Obligations of Lessee: Lessee shall, at all times and at its sole expense, maintain in good repair and keep in a clean and orderly condition the appearance of the vending service units, all Leasehold Improvements and Trade Fixtures therein, whether installed by Lessee or Lessor. All maintenance shall be equal to or better than the materials, workmanship and appearance representative of similar areas of the Phoenix Airport System directly controlled by Lessor. Lessee shall conduct regular and routine cleaning, inspections and maintenance within the Premises, and the pathways in between, and shall provide documentation of the cleaning, inspections and maintenance when requested by the Lessor. To maintain high standards of maintenance throughout the Premises, Lessor shall have the right to accomplish any required work in the event of Lessee’s failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish provided, however, that Lessor, before commencing any required work within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.

SECTION 10.2 - Repairs

10.2.1 All repairs to the Premises done by or on behalf of Lessee shall be of first-class quality materials and workmanship, equal to or better than the Lessee’s original materials and workmanship, and, except in emergencies requiring immediate response, approved in advance by Lessor in writing. Lessee shall be responsible for the cost to repair any damage to the Premises caused by the negligence or misconduct of Lessee or its Partners, contractors or invitees. Lessor shall be the sole judge of the quality of the repairs.

10.2.2 Lessee shall repaint or refinish, at its sole expense, high traffic areas subject to greater-than-normal wear as required by Lease, or as may be directed by Lessor. All vending service units, Leasehold Improvements and Trade Fixtures that become worn, chipped, dented, or gouged, shall be repaired or replaced at Lessee’s sole expense. The materials used to repair or replace vending service units, Leasehold Improvements and Trade Fixtures must adhere to the requirements of Section 7.

SECTION 10.3 - Failure to Maintain or Repair

If found that Lessee or its Partners was responsible for damages associated with a lack of regular and routine cleaning, inspections or maintenance of the Premises, Lessee shall be responsible for all associated costs to repair the Premises as well as any adjacent spaces to which damage may have spread.

If Lessee refuses or neglects to undertake the maintenance, repair, or replacements
requested by Lessor; or if Lessor is required to make any repairs necessitated by the acts or omissions of Lessee, its Partners, contractors, or invitees, Lessor shall have the right to make such repairs on behalf of and for Lessee. Such work shall be paid for by Lessee within ten days’ receipt of invoice from Lessor for payment at Lessor’s standard rates, plus Lessor’s administrative costs, or, if the work is performed by Lessor’s contractor, Lessor’s actual cost, including but not limited to Lessor’s administrative costs.

**SECTION 10.4 - Operation Costs**

Lessee shall be responsible for all costs of operating Lessee’s vending service unit(s) included under this Lease, and shall pay, in addition to rent and other payments specified in this Lease, all other costs connected with the use of the Premises, and those, rights and privileges granted.

**SECTION 10.5 - Utilities**

Lessor has provided and will maintain all utility service (ventilating and air conditioning equipment, electrical, fire suppression) to the Premises. Lessor shall not be responsible for charges relating to, telephone service and special wiring and hookups for computer(s) for the Premises, including wireless internet access. Lessor shall have no liability for blackouts, brownouts, cessation, interruption, or failure of utilities.

**SECTION 11 INSURANCE REQUIREMENTS**

**SECTION 11.1 – Introduction**

Lessee and its contractors and subcontractors shall procure and maintain for the term of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

Lessee shall deliver to Lessor, upon demand and prior to its occupancy of the Premises, a certificate of insurance acceptable to Lessor in the amounts as stated in Section 11.2 within thirty (30) days after City Council approval of the contract award or, the Respondent’s response guarantee may be forfeited as liquidated damages. Lessor reserves the right to review the sufficiency of and to modify the insurance requirements of this Lease in order to determine whether existing insurance requirements are reasonable, adequate and commercially available so that Lessee’s operations are insured to protect the Lessor’s interests. Lessee shall maintain insurance coverage throughout the term of the Lease or Lessor may terminate this Lease. Additional insurance coverage may be required depending on the type of concession services being provided.

**SECTION 11.2 – Minimum Scope and Limits of Insurance**

Lessee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability
requirements provided the coverage is written on a “following form” basis.

1. **Commercial General Liability – Occurrence Form**
   Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract.
   - Each Occurrence $1,000,000
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Fire Damage (Damage to Rented Premises) $100,000
   a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix is named as an additional insured with respect to liability arising out of the operations, use and/or occupancy by Lessee of the Premises subject to this Lease."**
   b. The policy shall not contain any restrictions of coverage with regard to operations on or near Airport Premises.

2. **Automobile Liability**
   Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Lease.
   - Combined Single Limit (CSL) $5,000,000
   a. The policy shall not contain any restrictions of coverage with regard to operations on or near the airports.

3. **Worker’s Compensation and Employers’ Liability**
   - Workers’ Compensation Statutory
   - Employers’ Liability
     - Each Accident $100,000
     - Disease-Each Employee $100,000
     - Disease-Policy Limit $500,000
     a. Policy shall contain a waiver of subrogation against the City of Phoenix.
     b. This requirement shall not apply when a Lessee or sublessee is exempt under A.R.S. 23-901, AND when such Lessee or sublessee executes the appropriate sole proprietor waiver form.

4. **Property Insurance (if applicable as determined by the City)**
   - Coverage for Lessee’s Leasehold Improvements Replacement Value
   - Coverage for Lessee’s contents Replacement Value
   a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.
   b. The **City of Phoenix shall be named as a loss payee** on property coverage for Lessee’s Leasehold Improvements.
c. The policy shall contain a waiver of subrogation against the City of Phoenix.

5. Fidelity Bond or Crime Insurance – Employee Theft
The bond or crime policy shall provide coverage for loss of monies belonging to the Lessor under the terms of the Lease as a result of theft by Lessee’s employees.

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a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Lessee.
b. The bond or policy must include coverage for third party fidelity, i.e. property of the Lessor that is held by the Lessee in any capacity, or property for which the Lessee is legally liable.
c. The bond or policy shall not contain a condition requiring an arrest and conviction.

SECTION 11.3 – Additional Insurance Requirements

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

1. On insurance policies where the City is named as an additional insured, the City shall be an additional insured to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required by this Lease.

2. Lessee’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

SECTION 11.4 – Notice of Cancellation

For each insurance policy required by the insurance provisions of this Lease, Lessee must provide to the Lessor, within two (2) business days of receipt, a notice if a policy is suspended, voided, or canceled, for any reason. Such notice shall be mailed, hand-delivered or sent via facsimile transmission to:

   City of Phoenix Aviation Department
   Business & Properties Division
   Phoenix Sky Harbor International Airport
   2485 E Buckeye Road
   Phoenix, AZ  85034

and shall be sent by certified mail, return receipt requested.

SECTION 11.5 – Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an “A.M. Best” rating of not less than B+ VI. Lessor in no way warrants the above-required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.
SECTION 11.6 – Verification of Coverage

Lessee shall furnish Lessor with certificates of insurance (ACORD form or equivalent approved by Lessor) as required by this Lease. 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 any required endorsements are to be received and approved by Lessor before the Lease term commences. Each insurance policy required by this Lease must be in effect at or prior to the commencement of the Lease and must remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal will be considered a material breach of the Lease.

The City Lease number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

The initial certificates required by this Lease shall be sent directly to:

City of Phoenix, Aviation Department
Business and Properties Division
2485 E Buckeye Road
Phoenix, AZ 85034
ATTN: Business and Properties Division
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix, Aviation Department
c/o EBIX RCS
P.O. Box 100085 – 76
Duluth, GA 30096
Fax #: 770-325-3339
Email: phoenixaviation@ebix.com

SECTION 11.7 - Subcontractors

Lessee’s certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Lessee shall furnish to the City separate certificates and
endorsements for each contractor or subcontractor. All coverages for contractors and subcontractors shall be subject to the minimum requirements identified above.

SECTION 11.8 – Approval

Any modification or variation from the insurance requirements in this Lease must have prior approval from the City’s Law Department, the decision of which shall be final. Such action will not require a formal Lease amendment, but may be made by administrative action.

SECTION 12
INDEMNIFICATION OF CITY

Lessee (Indemnitor) must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (“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) (“Claims”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Lessee or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Lessee’s operations or occupancy and use of the Leased Premises. This indemnity includes any Claims arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of Lessee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Lessee must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee’s own negligent or willful acts or omissions. Lessee will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Leased Premises, Lessee waives all rights of subrogation against Indemnitee for losses arising from the Indemnitee’s operations use, occupancy or condition of the Leased Premises. The obligations of Lessee under this provision survive the termination or expiration of this Lease.

SECTION 13
LIENS AND PERFORMANCE AND PAYMENT BONDS

SECTION 13.1 - Liens

Lessee shall not create, permit, or suffer any lien to be imposed upon the Premises or upon any Leasehold Improvements without promptly discharging the same. Lessee shall at all times indemnify and save the City harmless from all liens, claims, losses, demands, costs, expenses or liability cost for labor or materials in conjunction with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and against all reasonable attorneys’ fees and other costs arising by reason of any such liens or claims and the removal of liens.

SECTION 13.2 - Payment Bond

Prior to the commencement of any construction, alteration, or repair hereunder of Lessee’s Leasehold Improvements and/or Trade Fixtures which exceeds $10,000 in cost,
Lessee shall furnish to the Lessor, without expense to the Lessor, a payment bond issued by a surety company licensed to transact business in the State of Arizona and satisfactory to and approved by the Lessor with Lessee’s contractor or contractors as principals. The penal amount of the bond shall be not less than 100 percent of the total cost of the contract or contracts for the construction, alteration, or repair of such Leasehold Improvements and/or Trade Fixtures. In the event that such contracts involve alteration or work on or to the Lessor’s facilities, the payment bond shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract and shall protect the Lessor from any liability, losses, or damages arising from it.

SECTION 13.3 - Performance Guarantee

Lessee shall provide and maintain during the term of this Lease a performance guarantee in the form of an irrevocable standby letter of credit (“LOC”) guaranteeing the full and faithful performance by Lessee of all the terms and conditions of this Lease and serving as security for payment by Lessee of all claims by Lessor. The amount of the performance guarantee for this Lease shall be either six (6) months’ rent or $2,500, whichever is greater. Lessee shall increase the performance guarantee upon written demand of Lessor, provided such increases are found reasonable and necessary by Lessor. Lessor may draw or make a claim against the posted performance guarantee for failure of Lessee to perform according to the covenants, terms and conditions of the Lease. If Lessor draws or makes a claim on the posted performance guarantee, Lessee shall replenish the performance guarantee to its original amount within thirty (30) days’ notice of Lessor’s draw or claim unless otherwise agreed by Lessor in writing. The performance guarantee is required to be in place for the entire term of this Lease. Lessee’s failure to provide and maintain a performance guarantee under this paragraph shall be a material breach of this Lease.

If the performance guarantee is in the form of a LOC, Lessee will use Lessor approved LOC form attached as Exhibit G. The LOC shall be issued by a local financial institution preferably in the Phoenix Metropolitan area in a form that is satisfactory to Lessor and Lessor must be able to draw upon the LOC at any of the financial institution’s counters in the Phoenix Metropolitan area. Any modifications to the Lessor approved LOC form must be approved by Lessor. If a LOC is obtained, then unless Lessor receives a written extension of that LOC, in a form acceptable to Lessor, at least sixty (60) days before the end of the term of such LOC, Lessor, without notice to Lessee, may draw upon full amount of that LOC and retain proceeds as a cash security pursuant to this Section. Lessor will not pay interest to Lessee on any performance guarantee.

If the performance guarantee is in the form of cash, Lessee will be required to execute a cash deposit performance guarantee agreement that sets out the terms and conditions for the posting and handling of the cash security, and each party’s obligations. The required cash deposit performance guarantee agreement is attached as Exhibit 3 ("Cash Deposit for Performance Guarantee"). The Lessor will not pay interest to Lessee on any performance guarantee.
SECTION 14
ASSIGNMENT AND SUBLETTING

SECTION 14.1 – Assignment

Lessee shall not assign, hypothecate, surrender, sublease, or transfer all or any portion of its interest under this Lease, (collectively, an “Assignment”) nor permit any other person, firm or corporation to occupy the Premises without the prior written consent of Lessor. Lessor’s consent may be unreasonably withheld at the sole discretion of Lessor provided, however, that Lessee may, with the consent of Lessor, assign its interest under this Lease to a corporation in which fifty-one percent (51%) or more of the stock is owned by and management is controlled by the same person who owns and controls Lessee. For purposes of this Section, any transfer of control of Lessee’s business by sale of stock consolidation, merger or other means, is considered to be an Assignment of interest.

Lessor, as a condition of approval, will require that any transferee submit biographical and financial information and Lessor shall have thirty (30) days from the date Lessor receives a completed request to approve or deny same.

This Lease or any interest therein, shall not be subject to Assignment by operation of law.

Any Assignment without prior written consent of Lessor shall be null and void.

SECTION 14.2 – Terms of Sublease

14.2.1 Each sublease to this Lease is in all respects subject to and subordinate to this Lease. The terms of this Lease shall be reviewed with each Partner, and each Partner shall confirm in its sublease that such review has occurred. A copy of this Lease shall be attached as an exhibit to each sublease. Lessee shall provide complete copies of the executed subleases to Lessor.

14.2.2 The use, distribution and all associated rent fees for Premises among Lessee and its Partners shall be the responsibility of Lessee.

SECTION 14.3 – Approved Partners

Lessee is responsible for all contractual obligations of its Vending Service operations, including those Vending Service operations operated by its Airport Concessions Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), small business, sublease, and joint ventures Partners (collectively referred to in this Lease a “Partners”).
SECTION 15
CANCELLATION BY LESSOR

SECTION 15.1 - General Default

In addition to those events of defaults provided elsewhere in this Lease, Lessor may immediately terminate this Lease by giving Lessee written notice of the immediate termination upon the happening of any of the following events:

15.1.1 The taking of possession for a period of twenty (20) or more days of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.

15.1.2 The filing of any lien against the Premises because of any act or omission of Lessee that is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within twenty (20) days’ receipt of notice by Lessee.

15.1.3 Unless otherwise provided in this Lease, the breach by, or the failure, or refusal of Lessee to observe or perform, any of the covenants, terms and conditions herein contained and on its part to be observed and performed, which is addressed below, and such failure shall continue for a period of more than twenty (20) days after delivery by Lessor of a written notice of such breach.

15.1.4 The voluntary abandonment by Lessee of its operations for a period of one day or longer.

SECTION 15.2 - Rental Default

Lessor may place Lessee in default of this Lease by giving Lessee ten (10) days written notice for Lessee’s failure or refusal to timely pay rent as provided in Section 3. During the ten (10) day notice period, Lessee shall cure its rent default, including delinquent fees; otherwise, this Lease may be terminated at Lessor’s sole option without further notice.

SECTION 15.3 - Failure to Commence Construction of Trade Fixture or Leasehold Improvement

If Lessee fails to commence installation of trade fixtures in accordance with the Lessor-approved Implementation Plan or if Lessee fails to furnish the required performance guarantee and insurance policies on or before the time Lessee has given its contractor a Notice to Proceed, this Lease shall be considered breached and may be terminated by Lessor, and Lessee’s performance guarantee shall be forfeited as liquidated damages, not as a penalty, but to cover expenses incurred by Lessor as a result of Lessee’s breach. Further, all of Lessee’s rights and claims upon the Premises shall be immediately forfeited.
SECTION 16
CANCELLATION BY LESSEE

SECTION 16.1 - General Defaults

Lessee may cancel this Lease at any time that it is not in default in its obligations by giving Lessor thirty (30) days written notice after the happening of any of the following events materially impairing the conduct of its normal business from the Premises:

16.1.1 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining normal use of the Phoenix Airport System or any substantial part of it and the remaining in force of such injunction for a period of ninety (90) consecutive days.

16.1.2 The inability of Lessee or its customers to use, for a period of ninety (90) consecutive days, the Premises or any substantial part of it due to enactment or enforcement of any law or regulation, or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.

16.1.3 The lawful assumption by the United States (U.S.) government of the operation, control, or use of the Airport or Premises or any substantial part of it for military purposes in time of war or national emergency.

SECTION 17
REDELIVERY AND HOLDING OVER

SECTION 17.1 - Redelivery

Upon expiration or other termination of this Lease, Lessee’s right to occupy the Premises and exercise of the privileges herein granted shall cease and it shall surrender the same and leave the Premises in good condition except for normal wear and tear. Unless otherwise provided, personal property placed by Lessee on the Premises shall remain the property of Lessee, and Lessee shall have the right at any time during the term of the Lease, and for up to an additional period of thirty (30) calendar days after its expiration, to remove same from Premises; provided Lessee is not in default in its payments to Lessor hereunder, and provided that Lessee shall repair any damage caused by such removal. In the event Lessee fails to repair any damage to the Premises caused by the removal of Lessee’s personal property, Lessor shall have the right to make such repairs it deems necessary at Lessee’s sole expense. If Lessee’s personal property remains on the Premises up to an additional period of thirty (30) days after expiration, cancellation or termination of the Lease, then Lessee shall pay the proportionate share of rent for every day that the personal property remains on the Premises. Any personal property not removed by Lessee within the thirty (30) day period shall become a part of the Premises and title thereto shall vest in Lessor.

SECTION 17.2 - Holding Over

Lessor may, at its option, allow Lessee to hold over under this Lease on a month-to-
month basis. It is agreed and understood that any holding over of Lessee after the
termination of this Lease with Lessor’s consent shall not renew and extend the Primary Term
but shall operate and be construed as a month-to-month permit and Lessee agrees to pay to
Lessor fees or other payments that are in effect at the end of the Primary Term of the
Lease unless Lessor has given prior notice of any increased fees. Such increase in fees
may be given at any time with notice of not less than sixty (60) days. Lessee shall be liable
to Lessor for all loss or damage on account of any such holding over against Lessor’s
will after the termination of this Lease, whether such loss or damage may be contemplated
at this time or not. It is expressly agreed that acceptance of the foregoing payment to
Lessor in the event that Lessee fails or refuses to surrender possession shall not constitute a
waiver by Lessor of its right to immediate possession.

SECTION 18
DAMAGE OR DESTRUCTION

SECTION 18.1 - Damage or Destruction to Premises or to Unimproved Shell

Lessor shall be under no obligation to repair damage or destruction to Premises or to
the unimproved shell. At Lessor’s sole discretion, Lessor may choose not to repair or
reconstruct if the repairs cannot be made within six (6) months, if repair of damage deemed
too costly by Lessor, or if the lease term would expire within twelve (12) months from the date
of the damage or destruction.

If the unimproved shell is damaged by fire, explosion, Act of God, the public enemy, or
other casualty, but not rendered untenable, the same may be repaired with due diligence by
Lessor at its own cost and expense. If such damage is so extensive as to render the
unimproved shell untenable, but capable of being repaired within six (6) months, the same
may be repaired with due diligence by Lessor at its own cost and expense, and the rent
payable under Section 3 shall be proportionately paid up to the time of such damage, and
thereafter abate and cease until such time as the unimproved shell is again tenable.

If any portion of the Premises other than the unimproved shell is so damaged and
such damage is capable of being repaired within six (6) months, the same may be repaired,
with due diligence by Lessor at its own cost and expense. If such damage is so extensive
as to substantially impair Lessee’s operations within the Premises, the rent payable
hereunder shall be paid up to the time of such damage, and thereafter shall be equitably
reduced in proportion to such impairment until such time as Lessee’s operations shall be fully
restored.

If either the unimproved shell, excluding Lessee’s Trade Fixtures or Leasehold
Improvements, or the Premises, or both, be completely destroyed by fire, explosion, Act of
God, the public enemy or other casualty, or so damaged as to be untenable and
incapable of being repaired within six (6) months the rent obligations of Lessee hereunder
shall be paid up to the time of such damage or destruction, and thereafter shall be
proportionately reduced for impaired operation, or if no operation is possible, shall cease until such time as the Premises are fully restored, and rent obligations shall thereafter resume in the same proportion as Lessee’s operation on the Premises shall resume.

If the damage or destruction to the unimproved shell, Trade Fixtures or Leasehold Improvements, or the Premises, or all of the above, renders the entire premise untenable and is not repaired or restored within twelve (12) months after such damage or destruction, Lessor or Lessee shall have the right to cancel this Lease upon written notice to the other party as to such election.

If damage was caused by Lessee, Lessee shall pay for the repair or restoration at Lessee’s own cost and expense.

SECTION 18.2 - Damage to Premises

If any of the Leasehold Improvements or Trade Fixtures constructed or installed by Lessee in or at the Premises are damaged or destroyed by fire, explosion, Act of God, the public enemy or other casualty, Lessee shall repair or replace the same with due diligence at its own cost and expense. Such replacements or repairs shall be equivalent to or better in quality than the Leasehold Improvements and Trade Fixtures so destroyed or damaged. This paragraph shall not be applicable, however, if Lessor is not obligated and elects not to rebuild pursuant to Section 18.1. If Lessee fails to repair or replace such damaged Leasehold Improvements or Trade Fixtures subject to a schedule approved by Lessor and provided that this Lease has not been canceled, Lessor may make such repairs or replacement and recover from Lessee the cost and expense of such repair or replacement, plus an additional twenty-five percent (25%) of the expenses for Lessor’s administrative costs.

SECTION 18.3 - Protection of Contents of Premises

Protection against loss by fire or other casualty to the contents of the Premises shall not at any time be an obligation of the Lessor.

SECTION 19
FORCE MAJEURE

In the event Lessor or Lessee shall be prevented or unable to perform any act required by this Lease by reason of acts or determination of federal, state or local governments or fire, earthquake or similar Acts of God, or any other reason of a like nature beyond their control, then performance of such act shall be extended for a period equivalent to the period of delay; provided, however, that no such delay shall exceed ninety (90) days unless approved in writing by Lessor; otherwise, this Lease shall terminate.
SECTION 20

ATTORNEY'S FEES

In the event of litigation between Lessor and Lessee to enforce the rights or
obligations provided by this Lease, the non-prevailing party shall pay for the prevailing party's
reasonable attorneys' fees and costs of litigation as may be determined by the court.

SECTION 21

AMENDMENT

Any amendment, modification, or alteration of this Lease shall be effective only if
mutually agreed upon, reduced to writing, and signed by both parties.

SECTION 22

RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by Lessor or Lessee, or
by any third party, as creating the relationship of principal and sublessee, agent, Partners,
joint venturers, or any other similar such relationship, between Lessor and Lessee. It is
understood and agreed that neither the method of computation of rent and other payments,
nor any other provision contained in this Lease, nor any acts of Lessor or Lessee creates a
relationship other than the relationship of Lessor and Lessee as described in this Lease.

Lessee agrees no persons supplied by it in the performance of the Lease are
employees of Lessor and further agrees no rights to Lessor's civil service, retirement or
personnel rules and benefits accrue to such persons.

Lessee shall be responsible for all salaries, wages, bonuses, retirement, withholdings,
workers’ compensation, unemployment compensation, other benefits, taxes and premiums
appurtenant thereto concerning such persons provided by Lessee in the performance of the
Lease, and Lessee shall save and hold Lessor harmless with respect thereto.

SECTION 23

NO THIRD-PARTY BENEFICIARIES

The parties expressly agree that this Lease is not intended by any of its provisions to
create any right of the public or any member thereof as a third party beneficiary nor to
authorize anyone not a party to this Lease to maintain a suit for injuries or damage pursuant
to the terms or provisions of this Lease.

SECTION 24

PROHIBITED INTERESTS

No member, officer, or employee of Lessor during his or her tenure, and for one (1)
year thereafter, shall have any interest, direct or indirect, in this Lease or its proceeds.
SECTION 25
COMPLIANCE WITH LAWS

SECTION 25.1 - Rules and Regulations

25.1.1 Lessee, its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the U.S. government, the State of Arizona, the County of Maricopa, and the City and all agencies thereof that may be applicable to its operations or to the operation, management, maintenance or administration of the Phoenix Airport System now in effect or hereafter promulgated, without limits to other conditions in this Lease.

25.1.2 Without limiting the above, in performing this Lease, Lessee its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control, shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act of 1990 (ADA), and all pertinent Executive Orders, regulations and rules promulgated thereunder, and must train all employees and agents performing under this Lease on the Section 504 and ADA requirements.

25.1.3 Compliance with Environmental Laws - Lessee shall, at its own expense, comply with all present and subsequently enacted environmental law, and any amendments thereto, affecting Lessee’s use of the Premises including the requirements set forth in Exhibit 3 ("Compliance with Environmental Laws") attached hereto and incorporated herein by reference.

SECTION 25.2 - Supplemental Terms and Conditions to All Airport Agreements

Without limiting any other conditions set forth in this Lease, Lessee shall comply with the specific requirements more particularly set forth in Exhibit 4 ("Supplemental Terms and Conditions to All Airport Agreements"), attached hereto and incorporated herein by reference.

SECTION 25.3 - Taxes and Licenses

Lessee shall pay, on or before their respective due dates, to the appropriate collecting authority, any and all leasehold tax, sales tax, transaction privilege tax, federal, state, and local taxes, including real or personal property taxes and business taxes that are now or may be levied upon the Premises, or upon Lessee, upon Lessee’s interest in this Lease, or upon the business conducted on the Premises, or upon any of Lessee’s property used in connection with the Premises whether or not such tax, fee or assessment is levied, charged or assessed on City or Lessee; provided, however, that Lessee may at its sole expense dispute and contest these taxes and in such case such disputed items need not be paid until finally adjudged to be valid. In the event laws or judicial decisions result in imposition of a real property tax on the interest of Lessor, the prorata share of such tax attributable to the Premises should also be paid by Lessee for the period this Lease is in effect.
Lessee shall maintain in current status all federal, state, and local licenses and permits necessary or required by law for the construction of Leasehold Improvements and/or the installation of Trade Fixtures, and any other licenses necessary for the operation of Lessee’s vending service units.

SECTION 26
GENERAL PROVISIONS

SECTION 26.1 – ACDBE, DBE, and Small Business Utilization

26.1.1 The City encourages Lessee to voluntarily utilize small businesses wherever possible in accordance with the service standards of this Lease.

26.1.2 If Lessee voluntarily utilizes ACDBE, DBE and small businesses throughout the term of the Lease, Lessee agrees to notify the City of Phoenix Equal Opportunity Department of any changes in status, including level of utilization, identity of ACDBE, DBE or small business Partners and suppliers of goods and services, if applicable, and eligibility of those businesses for ACDBE or DBE designation.

SECTION 26.2 - EQUAL EMPLOYMENT OPPORTUNITY AND EQUAL PAY

A. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements.

B. Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee will SHALL ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, AND SHALL ADHERE TO A POLICY TO PAY EQUAL COMPENSATION TO MEN AND WOMEN WHO PERFORM JOBS THAT REQUIRE SUBSTANTIALLY EQUAL SKILL, EFFORT, AND RESPONSIBILITY, AND THAT ARE PERFORMED WITHIN THE SAME ESTABLISHMENT UNDER SIMILAR WORKING CONDITIONS. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered
into by supplier/lessee. The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

SECTION 26.3 - Subordination to Agreements with the United States

This Lease is subject to and subordinate to the provisions of any agreement currently in force or subsequently made between Lessor and the U.S. government, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Lessor for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. Lessor warrants it has no existing agreements with the U.S. government in conflict with the express provisions of this Lease.

SECTION 26.4 - Notices

Any notice, consent or other communication (“Notice”) required or permitted under this Lease shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the U.S. mail, postage prepaid.

If to Lessor:
City of Phoenix Aviation Department
Business & Properties Division
2485 East Buckeye Phoenix, AZ 85034
ATTN: Terminal Concessions

Telephone: (602) 273-4085
Facsimile: (602) 273-4083
E-Mail: paula.kucharz@phoenix.gov

If to Lessee:

Company Name
Address 1
Address 2
ATTN: Contact Name

Telephone: TBD
Facsimile: TBD
E-Mail: TBD

Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent via facsimile transmission; (4) on the second day
after its deposit with any commercial air courier or express delivery service; or (5) five (5) business days after the Notice is deposited in the U.S. mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

SECTION 26.5 - Approvals, Consents and Notices

All approvals, consents and notices called for in this Lease must be in writing and may not be established by oral testimony.

SECTION 26.6 – Offset Provisions

Lessee acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, which require that no payment be made to Lessee as long as there is any outstanding liquidated undisputed obligation due to the City and direct that any such obligations be offset against any payment due Lessee.

Lessee agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes (A.R.S.) §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law shall control.

Moreover, nothing in this Lease shall constitute a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S. § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within A.R.S. § 12-821.01(A) and (B).

SECTION 26.7 - Transactional Conflicts of Interest

Lessee acknowledges that this Lease is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

SECTION 26.8 - Paragraph Headings

All section and subsection headings of this Lease are inserted for reference only and shall not be considered to define or limit the scope of any provision.
SECTION 26.9 - Saving Clause

Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall nonetheless remain effective, provided that elimination of the invalid provision does not materially prejudice either Lessor or Lessee with regard to their respective rights and obligations.

SECTION 26.10 - Waiver of Claims

Lessee hereby waives any claim against Lessor and its officers or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease or any part of this Lease, or by any judgment or award in any suit proceeding declaring this Lease null, void, or voidable, or delaying the Lease or any part of it from being carried out.

SECTION 26.11 - Corporation Authorization

Contract holder must be authorized or registered to transact business in the state of Arizona and must be in good standing prior to City Council approval.

SECTION 26.12 - Incorporation of Exhibits

All exhibits and documents referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.


Lessor and Lessee hereby incorporate by this reference all provisions lawfully required to be contained in this Lease by any governmental body or agency.

SECTION 26.14 - Successors and Assigns Bound

All the provisions of this Lease shall bind the legal representatives’ successors and assigns of the respective parties.

SECTION 26.15 - Right to Amend

In the event that the FAA or its successors requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to satisfy the FAA requirements.
SECTION 26.16 - *Time of Essence*

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

SECTION 26.17 - *Good Faith*

The terms and conditions set forth in this Lease are for the mutual benefit of both parties. Because of the nature of this Lease, Lessor and Lessee agree that there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions, and covenants imposed by this Lease.

SECTION 26.18 - *Interpretation*

Lessor and Lessee agree that any rule of construction of contracts resolving disputes of interpretation against the drafting party is waived and shall be inapplicable to this document.

SECTION 26.19 - *Entire Lease*

It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire Lease between Lessor and Lessee as to this Lease. Lessee’s response to the Vending Services at PHX Terminal 4 Revenue Contract Solicitation (RCS) is incorporated by reference as fully set forth herein. It is further understood and agreed by Lessee that Lessor and Lessor’s agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against Lessor for, and Lessor shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or parole agreement with Lessor is expressly waived by Lessee. It is understood Lessor requires leases to be in writing and adopted by the City Council.

SECTION 26.20 - *Conflicts*

Conflicts among the documents composing this Lease shall be resolved in favor of the document that appears earliest in the following list:

a. Lease amendments, with later amendments superseding inconsistent provisions of earlier amendments;

b. This Lease including all Exhibits.

c. Vending Services at the Phoenix Airport System Revenue Contract Solicitation (RCS) Response
SECTION 26.21 - *Hazard, Potential Hazard, Nuisance, or Annoyance*

Any nuisance, annoyance, or hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Lessee’s actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from Lessor. If, in Lessor’s sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, Lessor may require Lessee to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this subsection shall be deemed to preclude Lessor from pursuing any available remedy for breach of this Lease. Lessee’s failure to promptly correct a nuisance, annoyance, or hazardous or potentially hazardous condition under this paragraph shall be a material breach of this Lease.

SECTION 26.22 – *Airport Security Plan*

Lessor has implemented an Airport Security Program (Program) in a form acceptable to the Federal Aviation Administration (FAA) and/or Transportation Security Administration (TSA) pursuant to Title 49 Code of Federal Regulations. Lessor reserves the right to modify that Program from time to time as it deems necessary to accomplish its purposes. Lessee shall at all times comply with the Program and indemnify and hold harmless Lessor from any violations of the Program committed by Lessee, its employees, agents, invitees or contractors.

SECTION 26.23 – *Lessee and Sublessee Worker Background Screening*

26.24.1 Lessee agrees all employees and subcontractors [collectively “Contract Worker(s)"] that Lessee and its Partners furnish to the City pursuant to this Lease shall be subject to background and security checks and screening (collectively “Background Screening") at Lessee’s sole cost and expense as set forth in this Section. The Background Screening provided by Lessee shall comply with all applicable laws, rules and regulations. Lessee further agrees the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Lease. The City in no way warrants that these minimum requirements are sufficient to protect Lessee from any liabilities that may arise out of Lessee’s services under this Lease or Lessee’s failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Lessee and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Lease.

26.24.2 Lessee agrees it will verify legal Arizona worker status as required by A.R.S. § 41-4401. Lessee further agrees it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

26.24.3 In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other
documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Lease.

26.24.4 By executing this Lease, Lessee certifies and warrants it has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Lease, Lessee further certifies and warrants it has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Lease shall not be proposed to perform work under other City contracts or engagements without the City’s prior written approval.

26.24.5 Lessee shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Lease including, but not limited to, supervision and oversight services.

26.24.6 The Background Screening requirements of this Section are material to the City’s entry into this Lease and any breach of this Section by Lessee shall be deemed a material breach of this Lease. In addition to the indemnity provisions set forth in Section 12 of this Lease, Lessee shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 12) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Lessee or the City for failure to satisfy this Section.

26.24.7 Lessee’s obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Lease.

Lessee shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Lessee shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Lessee’s compliance with this Section pursuant to Section 3.9.

SECTION 26.24 – Contract Worker Access Controls, Badge and Key Access Requirements

26.25.1 A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE CITY’S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER’S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

26.25.2 After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all
requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

26.25.3 If the Contract Worker’s services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Lessee for each key issued.

26.25.4 Lessee shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

26.25.5 All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker’s access to a City facility is no longer required to furnish the services under this Lease. Lessee shall collect a Contract Worker’s badge and key(s) upon the termination of the Contract Worker’s employment; when the Contract Worker’s services are no longer required at the particular City facility(s); or upon termination, cancellation, or expiration of this Lease.

26.25.6 Lessee’s default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Lease without the proper badge, key or Background Screening; (4) Contract Worker or Lessee submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Lessee fails to collect and timely return Contract Worker’s badge or key upon termination of Contract Worker’s employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Lease. Lessee acknowledges and agrees the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Lessee agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree Lessee’s failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Lessee shall be liable for and shall pay to the City the sum of one thousand dollars ($1,000) for each breach by Lessee of this Section. The parties further agree the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Lease in the event Lessee breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City’s actual damages in the event Lessee breaches this Section. The parties further agree three (3) breaches by Lessee of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Lessee of this Section arising out of the same default within a period of twelve (12) consecutive months, shall constitute a material breach of this Lease by Lessor and the City expressly reserves all of its rights, remedies and interests under this Lease, at law and in equity including, but not limited to, termination of this Lease.
SECTION 26.25 - Lessor Improvements to Premises

Lessor and Lessee agree and acknowledge that, from time to time, Lessor may undertake improvements to the Premises during the term of this Lease. Lessor will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Lessee authorized under this Lease. Lessee expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Lessee that may arise as a result of such improvements undertaken by Lessor.

SECTION 26.26 - Statutory Remedies

A.R.S. Title 33, Chapter 3, Article 4, entitled “Remedies of Landlord” and any subsequent amendments shall apply to this Lease and shall be in addition to any other remedy available to Lessor under law or in equity at the election of Lessor.

SECTION 26.27 - Non-Waiver

No waiver or failure or delay in exercising any rights, power, or privilege by Lessor of default by Lessee in performance of any requirements of this Lease shall be construed to be or act as a waiver of any subsequent default in performance of the same or any other requirement. The acceptance of rent or other payments by Lessor for any period or periods after a default by Lessee shall not be deemed a waiver of Lessor’s right to exercise its remedies under this Lease for nonperformance.

SECTION 26.28 - Tenant Liability Continues

No such cancellation or termination of this Lease shall relieve Lessee of its liability and obligations under this Lease and such liability and obligations shall survive any such expiration or termination.

SECTION 26.29 - Lessee Bankruptcy

In the event that a petition in bankruptcy is filed:

a. this Lease shall be deemed to be a “Shopping Center Lease” as provided in 11 U.S.C. §365(b)(2)(D) and (b)(3), governing certain non-monetary defaults;
b. Lessor shall have the right to cure and be reimbursed for any non-monetary defaults that it cures;
c. Under 11 USC § 365(b)(1), the meaning of a “prompt” cure shall be defined as a cure which occurs within thirty (30) days; and
d. Lessee shall seek no more than an additional thirty (30) days in addition to the time provided by law whenever Lessee may petition the court for “additional time.”
SECTION 26.30 Governing Law; Forum; Venue

This Lease is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Lease that cannot be administratively resolved, or otherwise related to or arising from this Lease, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.
IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

By: ______________________________
    James E. Bennett, A.A.E.
    Director of Aviation Services

ATTEST:

______________________________
City Clerk

APPROVED AS TO FORM:

______________________________
Acting City Attorney

Lessee

Company Name
State and Type of Business Entity

By: ______________________________
    PRINT NAME

Title: ______________________________

Signature: __________________________
### EXHIBIT 1
**Premises and Concepts**

To be added from awarded Response prior to Lease execution.

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<td>13 Aviation Dept. Office Bldg</td>
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Aviation Department Office Building

Vending Service space (5 units or potential market concept opportunity)
EXHIBIT 2
Letter of Credit Form

[_BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. ______________

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, Arizona 85034
Attn: Deputy Aviation Director

Applicant: Company Name
Amount: $ xxx.xx
Expiration Date: mm/dd/yyyy

We hereby establish our irrevocable Standby Letter of Credit No. __________ in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (address of bank in Phoenix Metro Area, Arizona), accompanied by the following documents:

1. A certificate purportedly signed by the Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:

   A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. __________ as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. __________, or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of $ ______________.

   B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. __________ as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. __________ or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of $ ______________.

   C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. __________ as the City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. __________ will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of $ ______________.
2. This original Standby Letter of Credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile (“fax”). Documents to be directed to our counters at: [insert address as to counter location]. Drawing presented to us via fax must be sent to our fax number [insert – bank’s fax number] (each such drawing, a “Fax Drawing”) provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. [insert – bank’s telephone number(s)]. In the event of a Fax Drawing, Beneficiary is not required to send us the original documents.

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) 273-4083 that the demand was not effected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not effected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

Partial drawing and multiple presentations are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least sixty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail or overnight courier that we elect not to renew this Standby Letter of Credit.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: ________________________________
Authorized Signature
EXHIBIT 3
Cash Deposit For Performance Guarantee

To: City of Phoenix – Beneficiary
  Aviation Department
  Business & Properties Division
  3400 East Sky Harbor Boulevard, Suite 3300
  Phoenix, Arizona 85034-4405
  Attn: Deputy Aviation Director

Tenant: Tenant Full Legal Name
  Address 1
  Address 2
  City, State, Zip

Date: [Insert Date]

Amount: [Insert Amount]

As required by [Lease Agreement No. TBD – dated ] or [Permit No. ______], [Insert Tenant Full Legal Name (_____) is providing a cash deposit to the City of Phoenix (City) as security for the faithful performance by [Insert Tenant Name] to secure payment of all amounts owed by [Insert Tenant Name] to City and its performance of other obligations under the [Lease No. TBD – dated ] or [Permit No. ______]. [Insert Tenant Name]'s cash deposit is for the initial amount of (Insert Amount), representing three months of payments under its [Lease No. TBD – dated ] or [Permit No. ______].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated ] or [Permit No. ______] may become inadequate during the [Lease No. TBD – dated ] or [Permit No. ______] term and [Insert Tenant Name] agrees that it will increase the amount as the City may reasonably prescribe from time to time on at least thirty (30) days prior written notice to [Insert Tenant Name]. The City may commingle the performance guarantee with the City's other funds and City shall have no obligation to pay or account to [Insert Tenant Name] for any interest that may be earned on the performance guarantee.

If [Insert Tenant Name] defaults with respect to any provision of the [Lease No. TBD – dated ] or [Permit No. ______], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated ] or [Permit No. ______].
If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease No. TBD – dated ] or [Permit No. ______] to be performed by it, the performance guarantee or any balance thereof shall be returned to [Insert Tenant Name]’s within a reasonable time after the expiration of the [Lease No. TBD – dated ] or [Permit No. ______], provided, however, that the City may retain the performance guarantee until such time as any amount due from [Insert Tenant Name] under the [Lease No. TBD – dated ] or [Permit No. ______] has been determined and paid in full.

AGREED AND ACCEPTED:

By: ____________________________
[Insert Tenant Full Legal Name]

Title: ____________________________
Print

Name: ____________________________
Print

Date: ____________________________

v.846865
EXHIBIT 4
Compliance with Environmental Laws

Contractor shall, at Contractor’s own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor’s occupation and use of the Premises.

A. DEFINITIONS

1. “Environmental Laws” means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendment and Reauthorization Act [SARA]; the Solid Waste Disposal Act [SWDA], 42 U.S.C. Sections 6901 et seq., as amended by the Resource Conservation and Recovery Act [RCRA] including Subtitle I, Underground Storage Tanks; the Toxic Substances Control Act [TSCA], 15 U.S.C. Sections 2601 et seq.; the Public Health Service Act (Title XIV) [PHSA] a.k.a. the Safe Drinking Water Act [SDWA] and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the Federal Water Pollution Control Act [FWPCA], as amended by the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; Title 49 of the Arizona Revised Statutes, including the Arizona Environmental Quality Act, A.R.S. Sections 49-101 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Section 49-701 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-901 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; the Occupational Safety and Health Act of 1970 as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

2. In this Contract, the term “regulated substances” means:

   a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in CERCLA/SARA; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101 et seq.; RCRA, Subtitle I, Regulation of Underground Storage Tanks, 42 U.S.C. Sections 6991 through 6991i; Clean Air Act, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.

   b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the Arizona
Environmental Quality Act, A.R.S. Sections 49-101 et seq., including but not limited to, the Water Quality Assurance Revolving Fund Act [WQARF], A.R.S. Sections 49-281 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Sections 49-701 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to Management of Special Waste; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.

c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.

3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.

5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

1. Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix (“City”), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability,
breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Contractor’s occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor’s obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor’s occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or groundwater on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises results in any contamination of the Premises, air, groundwater or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City’s approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor’s rights, if any, to seek contribution or indemnity from another person.

3. Contractor shall, at Contractor’s own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor’s occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor’s receipt of written request, and copy any and all records, test results, studies and/or other
documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises.

4. Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:

a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor’s occupancy or use of the Premises;

b. Any change in Contractor’s activities on the Premises that will change or have the potential to change Contractor’s or City’s obligations or liabilities under Environmental Laws;

c. Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.

5. Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.

6. Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.

7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

8. Contractor shall take reasonable precautions to prevent other persons not acting under Contractor’s authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor’s authority.

9. Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

C. TERMINATION OF AGREEMENT

Contractor’s failure or the failure of its agents, employees, contractors, invitees or of a third
party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

1. The City of Phoenix may, at the City’s election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day’s written notice to Contractor, to make payments required of Contractor or perform Contractor’s obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.

2. The City of Phoenix may, at the City’s election, terminate this Contract upon written notice to Contractor. Upon the City’s termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) eighteen percent (18%) per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of “self-help” or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

5. The covenants of this Exhibit shall survive the termination of this Contract.

D. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

Contractor shall also comply with the attached AZPDES Stormwater General Permit Compliance Supplement to this Exhibit as if the Supplement is fully set forth herein.
SUPPLEMENT TO EXHIBIT 4

AZPDES Stormwater General Permit Compliance

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

The City of Phoenix (the “City”) and its Contractors are required to obtain AZPDES permit coverage to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2008-001) (“AZPDES Construction General Permit”) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity from Non-Mining Facilities to Waters of the United States (AZMSG2010-002) (“AZPDES Multi-Sector General Permit”) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in “air transportation” and associated activities.

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its “air transportation” facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the “Airports”). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, and has in place an “Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy” (“Aviation Stormwater Policy”), both of which were developed to comply with federal and local laws governing stormwater pollution.

Compliance Generally

The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department, its contractors and permittees. Contractor is subject to the policy as a condition of its activities, operations, and location at the Airports. The City shall have the right to monitor and require compliance with the Aviation Stormwater Policy.

Contractor agrees to comply with the Aviation Stormwater Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Contractor, those requirements of the Airports’ Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to its operations and activities on the Premises at the Airports. Contractor warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and the Aviation Stormwater Policy, or that are agreed to by
the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

Full compliance with the AZPDES Permit Program as contained in 18 A.A.C. 9, Art. 9; Chapter 32(C) of the Phoenix City Code; and the Aviation Stormwater Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may Contract. This remedy is in addition to any other remedies available to the City.

AZPDES Construction General Permit

If Contractor elects to perform construction activities at the Airports, Contractor is required, prior to commencing those construction activities, to obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor will obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City’s project manager. The City will consult with and assist Contractor with regard to the filing for AZPDES Construction General Permit coverage as time and personnel allow. Contractor will also work with the City’s project manager to develop pollution controls (e.g., Best Management Practices, Control Measures, schedules and procedures) for the SWPPP. Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its AZPDES Construction General Permit obligations.

AZPDES Multi-Sector General Permit

Contractor is required, prior to commencing its operations and activities at the Airports, to obtain stormwater discharge authorization from the ADEQ under an AZPDES Multi-Sector General Permit. Contractor will obtain that authorization as a “Co-Permittee” with the City. As a Co-Permittee, the Contractor agrees to:

a. Provide the City with a copy of Contractor’s written Authorization to Discharge to the extent Contractor has received such from the Arizona Department of Environmental Quality; and

b. Implement the Airports’ SWPPP, including Best Management Practices, Control Measures, schedules, and procedures, as applicable to the Contractor’s operations.

In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of storm and other precipitation event water with “significant materials” (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP
applicable to its activities.

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor’s relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or Contractor’s exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor’s removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

Pollution Controls

City reserves the right to impose upon Contractor any Best Management Practices, Control Measures, schedules, and procedures, other action necessary to ensure City's ability to comply with its AZPDES program requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Contractor shall have ten (10) days from date of receipt of written notice imposing such pollution control measures or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Contractor does not provide the specified timely notice, it will be deemed to have assented to implementation of the pollution control measures or other requirements. If Contractor provides City with timely written notice of its objections, the parties agree to negotiate a prompt resolution of their differences. Contractor warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

As used herein, "extreme emergency conditions" means:

a. Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City's direction or oversight;

b. An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the ten (10) day notice period, but must implement pollution control measures before it reopens;

c. A collapse of the storm sewer system or other event which forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

Covenant of Good Faith

City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure compliance with any
AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Indemnification

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to Exhibit 4.

Revised April 4, 2012
968985
EXHIBIT 5
Supplemental Terms and conditions

Supplemental Terms and Conditions to All Airport Agreements

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.

2. "Contract" includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.

3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.

4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.

2. Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.

3. Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age,
or disability, including, without limitation, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

4. As a part of the consideration for this Contract, Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

5. As a part of the consideration of the Contract, Contractor does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the contractor shall use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City of Phoenix shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

7. Contractor agrees to insert the foregoing six provisions in any contract by which Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.
8. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

9. City of Phoenix reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations and additions.

10. The City of Phoenix reserves the right, but is in no way obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

11. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation or maintenance of the Airport. In the event that FAA or its successors require modifications or changes in the Contract as a condition to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications or changes as part of this Contract.

12. The Contract is subordinate to the reserved right of the City of Phoenix, its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.

13. Contractor agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1—Notice of Proposed Construction or Alteration—and provide documentation showing compliance with the federal requirements. Once the FAA has completed the
aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contractor.

14. Contractor, by accepting this Contract, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Contractor.

15. Contractor acknowledges that nothing contained in this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e).

16. This Contract and all the provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

17. If the Contract involves construction, the contractor shall carry out the project in accordance with FAA airport design, construction and equipment standards and specifications current on the date of project approval.

18. Contractor is encouraged to use fuel and energy conservation practices.

C. City of Phoenix Equal Employment Opportunity Requirement

1. If Contractor is by this Contract a supplier to, or lessee of, the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay
equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than thirty-five employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

2. **Documentation.** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

3. **Monitoring.** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

D. **Immigration Reform and Control Act of 1986 (IRCA)**

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.
E. **Conflict of Interest**

Contractor acknowledges that the terms and conditions of Arizona Revised Statutes (A.R.S.) § 38-511 are incorporated into this Contract.

F. **Legal Worker Requirements**

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

2. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

3. The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty under paragraph 1.

G. **Disadvantaged Business Enterprise Requirements**

1. To the extent that this Contract is covered by 49 CFR Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 26. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

   Contractor agrees to include the foregoing statement in any subsequent Contract that it enters and cause those businesses to similarly include said statement in further agreements.

2. To the extent that the Contract is a concession agreement covered by 49 CFR Part 23, the concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

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Rev. 07/19/16
EXHIBIT 6
Implementation Plan

To be added from awarded Response prior to Lease execution.