



City of Prescott

City Council - Voting Meeting

January 28, 2025 | 3:00 PM
201 N Montezuma Street
City Council Chambers, 3rd Floor
Prescott, AZ 86301

AGENDA

The following Agenda will be considered by the **Prescott City Council** at its **Voting Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of the meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending the meeting through the use of a technological device.

This Agenda was Amended on Friday, January 24 at 4:30 p.m. removing Item 6.B. Due to a Scheduling Conflict for the Prescott National Forest Service Staff

Viewing & Participation

This meeting may be viewed on Channel 64, Facebook Live or on the City's website: [City of Prescott Live Meetings](#)

Public comments for Council may be submitted through the City website: [Public Comment Form](#)

1. **CALL TO ORDER**
2. **INTRODUCTIONS / ANNOUNCEMENTS**
3. **INVOCATION - Pastor Scott Savage with Prescott Cornerstone Church**
4. **PLEDGE OF ALLEGIANCE - Councilwoman Fruhwirth**
5. **ROLL CALL**
6. **PRESENTATIONS**
 - A. Presentation from Public Works Staff Regarding 2024 Completed Transportation Projects
7. **OPEN CALL TO THE PUBLIC**

The City of Prescott welcomes public engagement and residents may comment & address Council regarding matters NOT included on the posted Agenda during the Call to the Public. Please complete a green speaker card and submit it to the City Clerk prior to the meeting being convened. Speakers are limited to four (4) minutes, and the Call to the Public will be limited to forty (40) minutes in total with the following stipulations:

 - Citizens will be limited to addressing Council on the same topic only four (4) times in total
 - If a topic has been addressed more than five times by different speakers, the Mayor may limit future discussion on this topic
 - Topics of a primarily national concern may be limited at the discretion of the Mayor

Please Note: Pursuant to A.R.S. §38-431.01(H), members of the Council may NOT discuss items that are not specifically identified on the Agenda and, therefore, interaction will be limited to the

following:

- 1) Responding to criticism
- 2) Requests to staff to investigate & report on the matter
- 3) Request that the matter be scheduled on a future agenda

8. **CONSENT AGENDA**

Items listed on the Consent Agenda may be enacted by one motion and one vote. If discussion is required by members of the governing body, the item will be removed from the Consent Agenda and will be considered separately. Recommended Action: MOVE to approve Consent Agenda Items 8.A. through 8.L.

- A. Approval of Meeting Minutes from the January 14, 2025 Study Session and the January 14, 2025 Voting Meeting.
- B. Adoption of Resolution No. 2025-1912 Providing Notice of the August 5, 2025 Primary Election and the November 4, 2025 General Election.
- C. Approval of Appointment of Member to the Community Block Grant (CDBG) Citizens Advisory Committee.
- D. Adoption of Resolution No. 2025-1910 Approving City Contract No. 2025-128 an IGA Between the City of Prescott and Prescott Unified School District for a School Resource Officer for Granite Mountain Middle School.
- E. Approval of City Contract No. 2023-211A4, an Amendment to City Contract 2023-211 with J. Banicki Construction, for Construction of the Sundog WWTP Septage Station Improvements Project in the Amount of \$173,602.00. Funding is Budgeted & Available in the Wastewater Fund.
- F. Approval of City Contract No. 2023-209A4, an Amendment to City Contract No. 2023-209 with Combs Construction Company Inc. for the Construction of the Downtown Bollard Project in an Amount Not to Exceed \$297,790.00. Funding is Budgeted & Available in the Streets Fund.
- G. Approval of Purchase Order for the Purchase of Traffic Bollards from Blue Ember Technologies, LLC., in the Total Amount of \$73,520.00. Funding is Budgeted & Available in the Streets Fund.
- H. **FNP24-001** - A Dedication of a Right-of-Way for the Next Phase of Jenna Lane and James Lane Within the Deep Well Ranch Master Plan. Location is West of Willow Creek Road & North of State Route 89A.
- I. Approval of City Contract No. 2025-131 with Balar Equipment for the Purchase of One (1) Titan Vacuum Truck in the Amount of \$755,813.21. Funding is Budgeted & Available in the Wastewater Fund.
- J. Adoption of Resolution No. 2025-1916 Regarding Support of Local Control of Short-Term Rentals.
- K. Approval of City Contract No. 2024-054A5 with Courtesy Chevrolet in the Amount of \$58,811.11 for the Purchase of a 2025 Chevrolet Silverado 1500 Crew Cab 4x4, and Approval to Utilize Funding from the Opioid Settlement Grant Fund to Purchase & Install Emergency Equipment in that Vehicle in the Amount of \$13,314.58 from Northern Arizona Upfitters as Well as Move One (1) Full Time Sergeant Assigned to the Narcotics Task Force from the General Fund to the Opioid Settlement Grant Fund.

- L. Approval of City Contract No. 2025-132 with Server Monkey for Three Years of Nutanix Server Infrastructure Software Support & Maintenance Using Contract OMNIA 01-169 (NCPA 01-169) in an Amount Not to Exceed \$158,326.44. Funding is Budgeted & Available in the IT Department Budget.

9. REGULAR AGENDA

- A. **WSA24-052:** Approval of a Water Service Application Submitted by Ikon.5 Architects on Behalf of Owner Embry Riddle Aeronautical University. Location: APN 106-03-004 Comprising 240 Acres. Requesting 11.33 Acre Feet Per Year.
Recommended Action: MOVE to approve or deny WSA24-052
- B. Approval of City Contract No. 2023-210A6, an Amendment to City Contract No. 2023-210 with Fann Contracting, Inc. for the Construction of the Eastwood Drive Parking Improvements in an Amount Not to Exceed \$348,614.00. Funding is Budgeted & Available in the Streets Fund.
Recommended Action: MOVE to approve City Contract No. 2023-210A6
- C. Adoption of Ordinance No. 2025-1881 Approving LDC24-001 a Proposed Amendment to the Land Development Code Affecting Accessory Dwelling Units.
AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE CITY OF PRESCOTT'S LAND DEVELOPMENT CODE SECTION 2.5.6/GUEST QUARTERS TO ALLOW FOR ACCESSORY DWELLING UNITS (ADUS) TO BE RENTED LONG-TERM SUBJECT TO REQUIREMENTS LISTED WITHIN ARTICLE 2.5.6; ADDITION OF DEFINITION FOR ADUS UNDER LDC TABLE 11.2.5/GENERAL TERMS
Recommended Action: MOVE to adopt OR adopt with modifications OR deny Ordinance No. 2025-1881

10. ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (1) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (2) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (3) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (4) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. § 38-431.03(A)(4));
- (5) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (6) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6));

(7) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on 1/24/25 at 4:45 p.m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Sarah M. Siep

Sarah M. Siep, City Clerk



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: City Clerk
ITEM #: 8.A
SUBJECT: Approval of Meeting Minutes from the January 14, 2025 Study Session and the January 14, 2025 Voting Meeting.

ITEM SUMMARY

This item is for the approval of meeting minutes from the January 14, 2025 Study Session and the January 14, 2025 Voting Meeting.

BACKGROUND

None.

FINANCIAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDED ACTION

MOVE to approve the meeting minutes as presented

ATTACHMENTS

1. January 14, 2025 Study Session Minutes
2. January 14, 2025 Voting Meeting Minutes
3. Voting Meeting Minutes Attachment_Statement from Mayor Goode

City of Prescott

City Council - Study Session



January 14, 2025 | 1:00 PM
201 N Montezuma Street
City Council Chambers, 3rd Floor
Prescott, AZ 86301

MINUTES

1. CALL TO ORDER

Mayor Goode called the meeting to order at 1:00 p.m.

2. ROLL CALL

Phil Goode - Mayor
Connie Cantelme - Mayor Pro Tem
Lois Fruhwirth - Councilwoman
Ted Gambogi - Councilman
Brandon Montoya - Councilman
Eric Moore - Councilman
Cathey Rusing - Councilmember

3. DISCUSSION

- A. Presentation & Discussion Regarding Establishment of a Citizens Sustainability & Resiliency Advisory Committee.

City Manager Dallin Kimble announced that Councilmember Rusing and Councilman Moore requested this item.

Councilmember Rusing stated that this has been in the works for many years and will be provided by a group of concerned citizens.

Quad City Climate Collaborative Board President Patrick Grady thanked the Council for their time and provided a presentation regarding the formation of a Sustainability and Resiliency Citizens Advisory Committee. He also introduced Board Member Kristen Law to the Council.

* Volunteer Committee comprised of members with expertise in sustainable practices

* Purpose - augment city resources and assist with implementation of FY25 Strategic Plan and 10-year general plan

* Genesis - unanimous approval in 2022 to commission a climate profile for the quad cities and Climate Action Options Report from 2023

Benefits:

* Provide expertise in conservation, wildlife management, renewables, energy policy, community planning, low impact development, economic benefit analysis

* Provide consolidated inputs from multiple stakeholders

* Research best practices with data and facts

- * Supplement staff resources
- * Examine budget saving opportunities, particularly in area of energy efficiency and conservation
- * Formalized Committee/working group demonstrates responsiveness to top citizen quality of life input
- * General Plan Alignment - resiliency and sustainability chapter (environmental planning and climate/energy use), community connected chapter (wildlife corridors/open space), economic competitiveness chapter (recreational tourism/workforce recruitment/sustainable growth and development)
- * Strategic Plan Alignment - Priority #4 Preserving the Natural Environment, Priority #2 Economic (attracting new business, implementing municipal energy audit)

Engagement Concepts:

- * Research & review best practices, propose actions and projects in support of energy conservation
- * Organization Option I - Mayor and Council authorized Citizens Committee
 - 7-11 members
 - City staff appointed support the mission and function
 - Official committee creates credibility and accountability
- * Organizational Option II - Citizens Working Group on Sustainability
 - Delve into specific sustainability projects with city staff
 - Nimble with flexible schedule and reporting
- * Requesting Council support to create this group

Councilmember Rusing thanked the presenters for their work and offer of partnership. She commented on the importance of saving energy and stated that there is room for improvement in the way the city handles energy and what it spends on utilities.

Councilman Gambogi commended the presenters on their professional presentation, he asked about tax credits and rebates on energy expenses.

Ms. Law responded that there are tax credits from the Department of Energy particularly for rural communities that the city would have to apply for on specific projects.

Councilman Montoya echoed Council comments on the presentation, he asked about fire danger in areas outside of the city's boundaries. While he appreciates organizing it under the city, he wonders if a regional collaboration method might be a better way to approach this because a disaster like a fire doesn't only stay within city boundaries.

Mr. Grady agreed, he added that they have approached the County as well for something along these lines. Feels that at the local level it is important to delve into projects that can help address these issues.

Councilmember Rusing commented that interagency cooperation is very important, need to start first with ourselves in being a catalyst and then bring in other agencies. She supports forming this Committee.

Mayor Pro Tem Cantelme also thanked the presenters for coming in today, she agrees that a regional effort is important but locally addressing the weak points in the city are important.

Councilwoman Fruhwirth stated that with her background she is used to a drive for cost savings and was happy to see in their materials targeted cost savings. The city's resources are limited, but she feels we are blessed with a community of retirees who are free and able to help and working groups is the breakthrough to staff over Committees.

Councilman Moore stated that the Council is very receptive to this message and would like to move forward in some capacity and feels that direction needs to be provided to staff on how to move forward.

Mayor Goode stated that he supports Option II, there are a number of beneficial targeted projects that could be utilized. A citizens committee with a broad number of members could put them in the same position as the Workforce Housing Committee, a working group that teams with staff could help keep things focused and moving in a positive direction.

Mr. Kimble echoed Council comments, he stated that he thinks he is hearing from the Council that they have an interest in pursuing these activities which will drive cost savings through collaboration with the community.

Councilman Montoya echoed comments regarding Option II being a good first step for this type of work.

Councilman Moore stated it would be helpful to have direction from management on what would be productive as it relates to this.

Mr. Kimble added that for staff formal Committees tend to be additional work and bosses, where working groups can be more helpful. This would be an opportunity to work with the community to get results.

Councilmember Rusing stated that it would be helpful to have consultants from Schneider Electric here to do a presentation.

Mayor Pro Tem Cantelme asked if there is a downside in forming Option II.

Mr. Kimble responded that grant applications would come directly from the city and the group would help write them. It depends what the Council wants the group to do.

City Attorney Joseph Young added that if the Council creates the group we are subject to open meeting law and creating a Committee, if staff and the citizens do so it is a working group and therefore not subject to open meeting law.

Councilwoman Fruhwirth stated that a working group that is teaming directly with staff and can work cross-departmentally as well.

Council consensus in support of Option II.

Member of the public Tom Rusing addressed the Council regarding being part of the local working group that analyzed the Regional Climate Assessment from UofA, their recommendation was to have local groups have the cities tackle these issues. He added that regional cooperation in these things is very important.

This item was for discussion only, no formal action was taken.

B. Presentation & Discussion Regarding a Potential Amendment to City Code Related to Gas-Powered Leaf Blowers.

Councilman Moore commented that this issue was brought forward by a constituent several months ago, and received a second from Councilman Montoya. The concern is over noise but also in the environmental impacts of leaf blowers. He stated that "small engines" like leaf blowers emit far more pollutants than a gas powered engine. More than 100 cities in the US have banned or limited the use of these types of small engines for lawn and garden care. Additionally, there are concerns in the city related to noise more specifically from cars but also from these types of equipment. Research shows that one hour operation of a leaf blower is equivalent to a car going 1,100 miles. He is in favor of this type of restriction.

Councilmember Rusing stated that these leaf blowers are damaging hearing and the environment. She recommended that the city become more proactive in education on these subjects before banning them.

Councilman Montoya stated that he feels it is worth having a discussion but he isn't in support on an outright ban at this point because he wants more information. Need to have staff look into it and see what other communities are doing and what any unintended consequences may be. Perhaps something similar to the water conservation program would be beneficial for this type of issue.

Councilman Gambogi stated that this Council is having a problem setting priorities, during fire-wise processes the equipment is not electric. There are far bigger fish to fry than this, he doesn't feel this is a priority.

Councilwoman Fruhwirth echoed Councilman Gambogi's comments, this is up to private citizens to manage and she is worried about unintended consequences of something like this. She appreciates the comments and maybe this is something that gets added for the working group, but she doesn't want to make it a priority for staff at this point.

Councilman Moore commented that this is a small ask and realizes there are bigger issues but this is in alignment with the Strategic Plan of this Council.

Mayor Goode commented that he finds gas powered leaf blowers annoying but if you want to have a small company work on your property they are faster and more cost effective. He echoed comments by other members of the Council that

the marketplace will continue to improve over time and ultimately make the decision for citizens with those improvements.

This item was for discussion only, no formal action was taken.

4. ADJOURNMENT

There being no further business to discuss, Mayor Goode adjourned the meeting at 2:09 p.m.

PHILIP R. GOODE, Mayor

ATTEST:

SARAH M. SIEP, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Voting Meeting of the City Council Voting Meeting of the City of Prescott, Arizona held on January 14, 2025. I further certify the meeting was duly called and held and that a quorum was present.

Sarah M. Siep, City Clerk



City of Prescott

City Council - Voting Meeting

January 14, 2025 | 3:00 PM
201 N Montezuma Street
City Council Chambers, 3rd Floor
Prescott, AZ 86301

MINUTES

1. CALL TO ORDER

Mayor Goode called the meeting to order at 3:00 p.m.

2. INTRODUCTIONS / ANNOUNCEMENTS

Mayor Pro Tem Cantelme announced holiday office and service hours for the upcoming Martin Luther King, Jr. Holiday. She reminded the public that the Prescott Public Library without walls offers eBooks, online resources, streaming video, and more, and is available 24/7 at Prescott Public Library (prescottlibrary.info).

3. INVOCATION - Minister Anthony Mercadante with QuadCity Church

4. PLEDGE OF ALLEGIANCE - Mayor Pro Tem Cantelme

5. ROLL CALL

Phil Goode - Mayor
Connie Cantelme - Mayor Pro Tem
Lois Fruhwirth - Councilwoman
Ted Gambogi - Councilman
Brandon Montoya - Councilman
Eric Moore - Councilman
Cathey Rusing - Councilmember

6. PROCLAMATIONS

- A. Martin Luther King, Jr. Day of Service - January 20
Councilman Montoya presented the Proclamation.
Mayor Goode requested that a statement he read be included in the official record, that statement is attached to these minutes.

7. PRESENTATIONS

- A. Presentation Regarding the Downwinders National Day of Remembrance - January 27
Sherrie Hanna provided a presentation regarding Downwinders National Day of Remembrance which will take place on January 27.

Elise Whitman District Staff Assistant from Congressman Crane's Office read a letter of support regarding the RECA program.

8. OPEN CALL TO THE PUBLIC

A. Yvonne Dorman addressed the Council regarding fire and water issues in her neighborhood, the fires in California are exactly the issue that she has been bringing before the Council for several years and the lack of connection to fire hydrants is a major problem.

B. Dottie Morris addressed the Council regarding previous fire evacuations and zoning in times of a fire emergency. Her neighborhood of Cathedral Pines is in a very difficult position for evacuation given ingress/egress and access for other communities surrounding them.

C. Christina Johnston Meyers addressed the Council as a local business owner in the downtown area for Not our First Rodeo LLC. They needed a new location for their business and in the interim the Rodeo took and stored their merchandise when they met with people who had done online purchases to sell. Individuals from the surrounding neighborhood stopped her staff and demanded they show their financials, and harass under 18-year old staff members. This is keeping small business owners from being small business owners.

D. Mary Ann Deminsky addressed the Council and introduced herself as the Attorney General's Office local community engagement representative.

9. CONSENT AGENDA

MOTION BY COUNCILWOMAN FRUHWIRTH TO APPROVE CONSENT AGENDA ITEMS 9.A. THROUGH 9.E., EXCLUDING ITEM 9.D.; SECONDED BY COUNCILMAN MONTOYA: PASSED (7 - 0)

- A. Approval of Meeting Minutes from the December 3, 2024 and December 4, 2024 Council Retreat Meetings, the December 10, 2024 Executive Session, the December 10, 2024 Study Session and the December 10, 2024 Voting Meeting.
- B. Approval of City Contract No. 2024-207A1, an Amendment to City Contract No. 2024-207 with JARD for the 4th of July Event in the Amount of a \$125,000 Event Sponsorship Supporting the Planning, Logistics, and Execution of the 4th of July Event. Funding is Budgeted & Available Through Transient Occupancy (Bed) Tax Funds.
- C. Approval of City Contract 2025-122, a \$211,105.00 Grant with the Arizona Department of Transportation for Pavement Preservation Work on a portion of Runway 21L/3R at Prescott Regional Airport - Ernest A. Love Field with a Local Match Payment in the Amount of \$21,110.50. Funding is Available in the Airport Fund.
- D. **FNP23-012:** Approval of a Final Plat for South Ranch 2B, Consisting of 51 Single-Family Residential Lots Within the Deep Well Ranch Master Plan West off of Jenna Lane.
Councilmember Rusing pulled this Item from the Consent Agenda for further discussion and expressed her concerns regarding Zone 4 of the OEI Splay and a lack of mention regarding sound-proofing in the area or meaningful disclosure.

Community Planner Tammy Dewitt responded that information is provided in the sales office and in the recorded parcel the avigation easement is included. This information has also been provided to the Council and Planning & Zoning Commission (P&Z) previously. This is in substantial conformance with the preliminary plat, the Airport has reviewed all of this information and is comfortable with the disclosure items as well. Soundproofing is addressed with building codes and in the Development Agreement.

City Attorney Joseph Young confirmed. He added that conditions are part of the Development Agreement which covers all of the issues raised by Councilmember Rusing.

Ashley Marsh with Gammage & Burnham also addressed the Council regarding the final plat being in substantial conformance with the preliminary plat. The public report which discloses the Airport has to be signed at time of purchase, additionally the CC&Rs which the purchasers sign contain that information. Tract H was specifically addressed with the Airport and is intended as an area for a crash-zone.

Mayor Goode commented that as long as it is in substantial conformance the Council has to approve it.

Mr. Young confirmed and added that it means everything is what it was in the general plat for roads, and homes are generally where they were in the preliminary. Plats are line work.

MOTION BY COUNCILMAN GAMBONI TO APPROVE ITEM 9.D.; SECONDED BY COUNCILMAN MOORE: PASSED (6 - 1) COUNCILMEMBER RUSING DISSENTING

- E. Approval of City Contract 2025-117, with State 48 Public Affairs for Legislative Services on behalf of the City of Prescott in the Amount of \$306,000.00. Funding is Available in the City Manager's Fund.

10. CONSENT ORDINANCE

MOTION BY MAYOR PRO TEM CANTELME TO ADOPT CONSENT ORDINANCE ITEMS 10.A. AND 10.B.; SECONDED BY COUNCILMEMBER RUSING: PASSED (7 - 0)

- A. Adoption of Ordinance No. 2025-1882 Amending Title 4 of the Prescott City Code to Reflect a Voter-Approved City Transaction Privilege Tax Rate of 2.95%.

Mayor Pro Tem Cantelme thanked the public for adopting Prop 478 and stated that this tax will go a long way in preventing what is unfolding in California at this time.

Mayor Goode concurred and stated that this community has witnessed many dangerous wildfires over the last 10-years and it is important to be proactive in addressing these matters.

- B. Adoption of Ordinance No. 2025-1878 Authorizing the Purchase of 131-Acres for \$917,000 & Receipt of an Additional 270-Acres of Donated Property from Arizona Eco Development and Approval of City Contract No. 2025-103 a Purchase and Sale Agreement. Such Purchase and Donation was Agreed to by the Parties Pursuant to a Development Agreement Approved July 13, 2021.

Member of the public Michael Chandler addressed the Council and asked what the purpose of the land purchases is, and if more flights would be allowed.

City Attorney Joseph Young responded that this is open space for the purpose of airport protection and were part of a Development Agreement.

Airport Director Rick Crider added that the land will facilitate tanker flight safety and protection of the airport. There would also be the potential for additional air service flights, but it will be a small number in comparison to the Forestry Service flights and the training flights.

11. LIQUOR LICENSE

- A. Public Hearing and Consideration for a New Series 12 Restaurant Liquor License Application from Lorie Ann Kapaun, Applicant, for Willow Tree Tapas and Wine LLC. Location: 2889 Willow Creek Road.

City Clerk Sarah Siep informed the Council that this item was previously approved, however, the applicant was asked by the DLLC to pull and resubmit their application due to delays at the location so this additional step is required because of that.

MOTION BY COUNCILWOMAN FRUHWIRTH TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN MONOTYA: PASSED (7 - 0)

MOTION BY COUNCILWOMAN FRUHWIRTH TO APPROVE ITEM 11.A.; SECONDED BY COUNCILMAN MONTTOYA: PASSED (7 - 0)

12. REGULAR AGENDA

- A. Discussion, Consideration and Possible Action Regarding a Petition Received by the Council at the November 19, 2024 Voting Meeting and Submitted by Bonnie McMinn & Rod Moyer.

City Clerk Sarah Siep introduced the item and discussed how the presentation and discussion would take place. The petition and concerns from staff particularly restrictions on easements and prohibitions that may be an issue for public improvements.

City Attorney Joseph Young began the discussion and stated that the primary concerns from staff centered around the vagueness of the petition which should be cleaned up as well as restrictions on easements and prohibitions that may be an issue for public improvements. He also discussed a meeting he had with the petitioners in December regarding these revisions which they stated they were willing to do and those revisions were included in the memo. He feels the Council should provide clarifying language regarding these matters and may then move

forward with action on this item as they see fit.

Councilmember Rusing read a statement regarding changes that were made following the petitioners meeting with the City Attorney. She stated that the voters should have a say in the sale of city property particularly open space.

Councilman Montoya asked Mr. Young to address what specific details he would like to see clarified related to "city use".

Mr. Young responded that something like a parks, trail facilities, buildings, bathrooms, etc. could be done but isn't addressed in the petition. Overall staff recommendations from legal would include the following: limiting only non-utility easements (already agreed to by petitioners), clarifying language reflecting ability of city to use and build on land, removal of "redesignated", clarifying language regarding city uses, removing reference to 2008 Open Space Master Plan and removing reference to easement rights. The City Charter is broad enough that action has to be taken on this petition, but that action may be whatever Council deems appropriate.

Mayor Pro Tem Cantelme commented that there have been many meetings regarding Open Space in areas like the Granite Dells Park, and at some point a visitor center or something similar may be needed so, while she supports protecting property the Council needs to be careful about not tying hands in the future to make sure it is as specific as possible.

Mayor Goode agreed, it is important to consider all of the potential unintended consequences of this type of amendment. He is generally supportive of this initiative, but this is a major commitment to future open space protection.

Mr. Young reiterated that all options are open to Council now, he asked the City Clerk to address when language would need to be finalized.

Ms. Siep confirmed that late February is when the language needs to be finalized. She added that language is important and something that the Council should consider before taking action on this.

Mayor Goode agreed and stated that the Council should conduct a Special meeting to discuss this item specifically in order to meet that February timeframe and firm up the language of the amendment.

Councilman Moore stated that Charter Amendments can be voted on at any time through an election, so this could always come back onto a ballot in the future if the Council and voters wanted to do so.

Mr. Young added that conservation easements would be protected.

Councilwoman Fruhwirth stated that she feels continuing in good faith to work with the petitioners to get the language right and come to alignment on things before moving it forward is the best way to address this.

Councilman Gambogi commented that there doesn't seem to be consensus on this item and suggested moving it forward to the next meeting.

Mayor Pro Tem Cantelme added that in order to address concerns regarding costs of elections, the Council could stipulate that this only be allowed on an already scheduled election.

Ms. Siep confirmed and clarified all the overall costs associated with conducting an election whether it is on or off cycle.

Public Works Director Gwen Rowitsch addressed the Council regarding public infrastructure being maintained in open space and ensuring that access still be available with protection. She added that extending future roadways is also something to take into consideration. Additionally, there is property that is owned that is not zoned open space which also needs to be considered. For example the Granite Dells park has come in as R2-D Zoning, also there is a distinction between city open space and open space within developments.

Fire Chief Holger Durre continued the discussion regarding potential Fire Department impacts, for example secondary points of ingress/egress and impacts on construction costs and similar concerns to public works regarding servicing of aging infrastructure. When considering more open space there is responsibility in maintaining it and potential wildfire risk is important to consider as well.

Mayor Goode asked if the Council were to adopt this and then emergency access was restricted in an emergency situation could there be liability to the city for that.

Mr. Young responded that it could, however, he doesn't feel that is an issue specific to this item.

Councilman Moore commented that most of the city's open space is not developable and for that he is very grateful, the areas that the Council wants to protect would likely never be developed anyway.

Mayor Pro Tem Cantelme concurred, she asked where Chief Durre would like to see fire mitigation on open space.

Chief Durre responded that proactive protection like firebreaks are the most appropriate types of mitigation that would be tied in. A plan could be provided but it would take time to highlight out what that would look like.

Councilman Moore asked about the process of getting land rezoned.

Community Development Director Chelsea Walton responded that there are notification requirements, meeting with Planning & Zoning Commission and then approval by the Council so it would be the usual process.

Mr. Young responded that anything that is zoned open space and anything that is on the General Plan Use map would be part of the protected space through this

petition.

Councilwoman Fruhwirth commented that the schedule provided by Council for their availabilities in the upcoming months would be helpful in scheduling a special study session.

Councilman Montoya commented on the importance of doing the language properly.

Council consensus to schedule a special meeting within the next three weeks to discuss the language that can be agreed upon.

Mayor Goode opened the floor to public comment.

Member of the public JD Greenberg addressed the Council regarding the petition and her involvement in the Open Space Alliance. Prescott residents have consistently expressed their desire to protect open space in the community. There is a provision for utility access within this proposed Ordinance. Recreation and open space are a draw to the community and provide a better quality of life for our residents.

Member of the public Dottie Morris stated that it is imperative to protect this land, it is not a massive open park with swing sets and parking etc.

Member of the public Walt Anderson addressed the Council regarding the intent of the petition being written to be adjusted by the Council and staff in order to create a win-win for everyone. He commented on conservation easements being managed by a land trust or outside agency. This is what the people want.

Member of the public Roy Smith addressed the Council in support of the open space initiative and echoed comments from Mr. Anderson and Ms. Morris. He added that a citizen petition was abused by a previous Council and that cannot happen here, the Council has an obligation to protect this land.

Member of the public Barbara Jacobson addressed the Council on behalf of Tana Karen who commented on the importance of open space in the community. Open space should be kept safe forever.

Member of the public Joanne Oellers addressed the Council representing Save the Dells in support of moving the Charter amendment forward to a vote of the public.

Member of the public Ralph Hess addressed the Council and stated that he is happy to hear the consensus of the Council is to have this item on the Primary Election ballot. He doesn't feel that a study session is necessary and they could adopt the modified language today and reviewed the comments and concerns raised by staff.

Member of the public Jim Garing addressed the Council stating that he agrees with the direction Council is going but cautioned them regarding the length of

easements.

Member of the public Steven Munsell addressed the Council regarding West Granite Creek Park as an example of how things can move and how things can change. He is in support of the petition.

Member of the public James Knaup addressed the Council regarding his support of this petition, he hoped that the Council would decide to review this further and move forward with something. He added that there is nothing stopping the Council from providing a policy direction to protect this land as if it is already in the Charter.

Member of the public Leslie Loomis addressed the Council and stated that she moved here in 2001 because of the open space and echoed previous citizen comments regarding moving this forward and onto the ballot.

Petitioners Rod Moyer and Bonnie McMinn addressed the Council regarding having to act within 60-days of the submission of the petition. They did make modifications to their petition following a meeting with the City Attorney, he added that there are things that could be done even within the bounds of the petition which would alleviate some of the staff concerns expressed today and urged the Council to approve the petition today with modifications. Ms. McMinn continued the presentation regarding not being able to predict any contingency and that is why it is so important to let the voters decide. She feels that staff objections are the exact reason for this amendment, this is a legacy in preserving the history of Prescott.

Mr. Young added that his largest issue is ensuring that there is clarity in the proposal to avoid future issues.

Councilman Gambogi commented that this is micromanagement. He discussed Prop 478 and the campaigning that was done and the concept that there was going to be some future devious Council that is going to come in and do the opposite of what the voters want. This proposal looks like California and he isn't comfortable with that. There are times when the Council needs to act and having to wait for an election could cause a problem with that.

Councilmember Rusing addressed the 2001 ballot measure that wasn't worded properly and has caused problems since. She believes having a special meeting to firm up the language and get this on a ballot.

Mayor Goode concurred and stated that the meeting should take place no later than February 7.

MOTION BY COUNCILMAN GAMBOGI TO DENY THE CITIZEN PETITION PENDING THE SCHEDULING OF A SPECIAL CITY COUNCIL MEETING TO REFINE LANGUAGE AND TAKE FURTHER ACTION NO LATER THAN FEBRUARY 7; SECONDED BY COUNCILWOMAN FRUHWIRTH: PASSED (7 - 0)

- B. Approval of New Rates and Fees at the Prescott Regional Airport - Ernest A.

Love Field.

Airport Director Rick Crider provided a presentation to the Council regarding new rates and fees at the Prescott Regional Airport. These fees will highlight local vendors and businesses to advertise in the public as well as fees for auto parking fees within the Airport. These will also be updated with budget cycles.

Councilwoman Fruhwirth asked for clarification on whether the fees are monthly or annual.

Mr. Crider confirmed they are annual.

Mayor Pro Tem Cantelme asked what the total overall increase is.

Mr. Crider responded that it is \$0.40 and \$0.50 annually so a few cents per month amounting to approximately \$10,000 annually for the airport, bringing us into more modern methodology and industry standards.

Councilmember Rusing asked what the feedback has been from the hangar lessees.

Mr. Crider responded that staff has communicated with them and alleviated any concerns from the public, he added that the Airport Advisory Committee is in support of these updates.

MOTION BY COUNCILWOMAN FRUHWIRTH TO APPROVE ITEM 12.B.;
SECONDED BY COUNCILMEMBER RUSING: PASSED (7 - 0)

- C. Approval of Night Work on SR89, Between Phippen Trail Roundabout and Willow Lake Road Roundabout.

Capital Program Manager Tim Sherwood provided a presentation regarding night work on Jan. 27-Jan 31 from 7 pm - 5 am. Traffic impacts will be minimized by the work being done at night.

Councilman Moore commented that this area is in the county.

Mr. Sherwood confirmed and added that even though it is outside city limits it is in city right-of-way.

Mayor Pro Tem Cantelme commented on the closure recently taken place and asked about noticing.

Mr. Sherwood responded that residents will be able to come and go as needed, but notice will be provided regarding the detours and closure. Message boards will be up at least a week in advance and flyers will go out as well.

Mayor Goode asked that staff ensure there be large language regarding time of closures and for how long.

MOTION BY COUNCILMAN GAMBONI TO APPROVE ITEM 12.C.;
SECONDED BY COUNCILMAN MONTROYA: PASSED (7 - 0)

- D. **WSA24-045 & WSA24-046:** Approval of Two Water Service Applications Submitted by Dibble Engineering, on Behalf of Owner, Embry-Riddle Aeronautical University. Location: APN 106-03-004, Comprising 240 Acres, in T14N, R02W, Section 03, SE 1/4.

Water Resource & Environmental Services Manager Brian Ruiz provided a presentation regarding the water service applications for two residential hall buildings at Embry Riddle University. Demand analysis at 28 acre-feet/year, plus water for landscaping at 6 acre-feet/year making the total 34 acre-feet/year. In accordance with the Amended 2022 Water Policy no application can be approved if it is over 50% of the allocated water budget which is what the applicant has chosen to do at this time. The applicant has provided an overview of the financial and overall benefit they provide to the community.

Councilwoman Fruhwirth commented that the benefits had to be specific to the City of Prescott for the appeal, and thanked Embry Riddle for their specificity in their response on the appeal.

Councilman Moore stated that the property is currently very native and commented that they shouldn't need that much water for landscaping.

Embry Riddle Representative Chris Hardisty addressed the Council regarding the landscaping which will be minimal. He added that many students choose to live on campus and take advantage of the services offered there.

Mr. Ruiz added that these estimates are on the higher side to make sure they don't go over.

Mayor Goode responded that he thinks it would be wise to reduce the amount.

Mr. Ruiz responded that they tend to put in a higher estimate so they do not exceed it. This is something that is being examined in the long-term water management plan and how best to strategically utilize the WRMM.

Mayor Pro Tem Cantelme asked if xeriscaping is a consideration for the campus.

Mr. Hardisty responded that they do look at that and apply where appropriate.

MOTION BY COUNCILMAN GAMBONI TO APPROVE WSA24-045 & WSA24-046; SECONDED BY COUNCILMEMBER RUSING: PASSED (7 - 0)

- E. **CSP24-001:** A Proposed Comprehensive Sign Plan for the New Findlay Hyundai for Two (2) Monument Signs. Location: 1315 Auto Park Drive, APN 102-05-032T. Property Owner: Cedarwood Ranch LLC. Applicant: Grace Signs Arizona LLC.

Community Planner Tammy Dewitt provided a presentation regarding the proposed sign plan for the dealership at two locations along and off of Willow Creek Row. The dealership will also be building a new road called Auto Park Drive off of Willow Creek Road where the dealership will be located. The Deep Well Ranch monument sign is across the street from this property. Per LDC freestanding monument signs are to be a maximum of 12' in height, only two of

the other dealerships asked for changes and those are at 20'. She reviewed the proposed signs and stated that Planning & Zoning Commission (P&Z) voted to approve the signs at the same height of 22' and with the stipulations that the signs be turned off one hour after closing or 10 pm whichever is later.

Councilmember Rusing thanked Findlay for investing in the community, and she asked how tall the Deep Well Ranch windmill is and if the height of these signs will be an issue for the airport.

Ms. Dewitt responded that they did do the required FAA investigations and were approved at that height for the area.

Councilman Moore asked how they came up with the 22' when there are others in the area at 20'.

Ms. Dewitt responded that it was because they wanted it to match the other sign further down the road.

Member of the public Gary Wendell addressed the Council regarding the signage should be turned off one-hour after closing but no later than 10:00 p.m. would be better so the sign isn't on until 11 pm or later.

Ms. Dewitt responded this language is from the Commercial Corridor overlay, but could be changed if Council wanted to.

MOTION BY COUNCILWOMAN FRUHWIRTH TO APPROVE CSP24-001 WITH STIPULATIONS AS PROPOSED; SECONDED BY COUNCILMEMBER RUSING: PASSED (7 - 0)

- F. Public Hearing & Adoption of Resolution No. 2025-1911 and Ordinance No. 2025-1879 Establishing an Airport Vicinity Overlay District with Specific Requirements and Exemptions.

Community Development Director Chelsea Walton provided a presentation regarding the proposed AVO. She reviewed the existing aviation easement boundary in effect since 2004 in comparison to the proposed AVO. She reminded the Council that the AVO cannot be applied to property outside of the city boundaries, and is exempting property with existing entitlements and safeguarding already established uses. Applicable to new properties coming in and those without already existing uses.

Existing ANO:

- * Noise compatibility zones
- * Uses restricted by noise zones
- * Mapped noise contours
- * Allows sound reduction construction bonuses
- * Requires noise and aviation easement

Proposed AVO:

- * Noise compatibility zones
- * Uses restricted by noise zones

- * Mapped noise contours
- * Does not allow sound reduction construction bonuses
- * Requires noise and aviation easement
- * Adopts safety impact zones
- * Requires fair notice disclosures
- * Protects airspace from encroachment of tall objects

Ms. Walton continued with an overview of the proposed zoning map.

History of Airport Protection Actions:

- * 2001 - city adopted the Airport Specific Area Plan (ASAP)
- * 2002 - city adopted the Land Development Code (LDC) with an Airport Noise Overlay (ANO)
- * 2003 - city enacted a General Plan with recommended protections for the airport
- * 2011 - city approved an Airport Master Plan with land use protection recommendations
- * 2015 - city enacted a General Plan with recommended protections for the airport
- * 2017 - city updated the ASAP allowing for accommodation of "holistic land use plan"

Planning & Zoning Commission Meetings:

- * July 19, 2022 - joint meeting with the City Council
- * August 11, 2022
- * August 25, 2022
- * September 8, 2022
- * October 13, 2022
- * October 27, 2022
- * December 8, 2022 - P&Z voted to recommend the AVO by a 5-1 vote

Noise contour depict a contiguous future 60 DNL line are the modifications for the Ordinance.

Councilmember Rusing commented that Deep Well Ranch is exempt and asked what else is.

Ms. Walton responded that the AVO applies to property within the City limits so anything that is annexed in would apply. Section 5.2.2 second paragraph indicates that existing development rights which are exempted from the provisions of the AVO.

Airport Director Rick Crider commented that the Airport Advisory Committee is in favor of this and feels it will set the stage for future Development Agreements.

Mayor Goode commented on the potential YRMC North proposal and asked if this has been discussed with them.

City Attorney Joseph Young responded that staff has informed them and that it would be exempted based on the development agreement.

Councilwoman Fruhwirth asked about the other subdivisions south of Deep Well, like Pinion Oaks and the other neighborhoods.

Ms. Walton responded that all areas which are covered through Development Agreements in the area would be exempt. Pinion Oaks is not part of a DA but they do have already established units and are nearly built out, and are a platted subdivision (5.2.2 exemption).

Mr. Young added that this primarily impacts things that are currently zoned commercial and industrial and really impacts future rezoning as well as fair disclosure.

Councilwoman Fruhwirth asked if something is built in the County and is not annexed, but then is annexed in the future would it be exempted.

Ms. Walton confirmed, anything that is not developed and then annexed would be subject to the AVO.

Member of the public Michael Schnell addressed the Council as a former resident of Pinion Oaks who moved because of the excessive airport noise. He believes that AVO's are important for the protection of the Airport as well as the residents. The noise contours do not accurately reflect concerns of residents in the area in his opinion though.

Mr. Crider addressed concerns regarding 60 and 65 DNL lines representing a weighted average. Noise monitoring is done in these areas as well to determine where the lines should be.

Member of the public Daryl Austermiller addressed the Council regarding all of the meetings regarding this item. He stated that the FAA has moved forward in efforts to modify the DNL sound levels, evaluate the threshold for the review of these noises and evaluating the effects outside of the 65 DNL. This AVO is a start, but should be considered a living document and citizens should understand the implications of living near an Airport.

Member of the public Jenna James addressed the Council regarding the proposed changes to the map and having a contiguous line as these things should be consistent. The map should also be consistent with the language in the Ordinance, for example if there are exemptions in the Ordinance the map should show that. Additionally, she stated that the map seems to be proposing a future 60 DNL, and addressed an FAA circular that addressed the 65 DNL as the standard. The FAA recommendations have not been changed and the future 60 has not yet been adopted particularly when it is based on projections of what may be happening in the future. Should approve with the current 65 DNL based on the FAAs recommendations.

Councilman Montoya asked Mr. Crider to address Ms. James' concerns about the 60 versus 65 DNL and the extension of the runway.

Mr. Crider responded that sponsors should consider the 60 DNL moving forward because as development increases things change with regard to the noise impacts. This overlay is meant to inform development around the airport, the line is valid even though there is subjectivity to it. Consistent with legislation in 2024 the 60 DNL is appropriate, expansion of the airport would change that and move noise to the north.

Councilmember Rusing stated that this map is not perfect and is never going to be she suggested adopting it today and making changes in the future.

Member of the public Stephen Polk addressed the Council and asked for confirmation that DAs for annexed and un-annexed properties are exempt from the AVO. It is appropriate to exempt Deep Well because the ANO already applies under the existing Development Agreements, the Master Plan meets or exceeds all FAA requirements. He is struggling with the noise contour discussions today, this has been going on for multiple years and has been on pause since 2022 so he has concerns regarding publishing notices about it. The noise contours should be at the current 65 DNL because that is the FAA guidance, they are evaluating whether to change it and whether to even use it in the future so setting it at a future DNL is an overreach especially given that an airport expansion would adjust the lines. Embry Riddle can and should be part of a solution in this area. Finally, he stated that he has concerns with Prop207 violations if a future DNL that isn't reasonable is used. Table 5.2.2.b asterisk should be amended as it goes way beyond current FAA guidance of no residential in Zones 1 and 2.

Member of the public David White addressed the Council on behalf of St. Luke's Episcopal Church and echoed Ms. James' comments regarding the map showing exempted properties, he believes they are exempt but is unclear.

Mr. Young responded that they are not exempt in the same ways as Deep Well Ranch, but they are allowed to continue in the use they are and expand should they choose to do so.

Member of the public Jim Chamberlain addressed the Council and asked if the map of DA properties is attached to the Ordinance.

Ms. Walton responded that it is not, but feels that it may be better to list out the properties within a table so they are specifically listed.

Mr. Young stated that the language of the AVO exempts anything with a DA, but if there was a list of the development agreements.

Councilman Montoya commented that there is more due diligence that needs to be done around this topic.

Mayor Goode asked if the Council could include a map.

Mr. Chamberlain echoed Councilman Montoya's comments, the 65 DNL is inside the airport property and doesn't go out to this future line that is proposed. He also asked that Council look at page 7 of the AVO document with a chart of allowed

uses, this is legislating zones not specific to DNL lines out of potential residential development even in Zones 5 and 6.

Member of the public Robert Maro addressed the Council as a resident in Deep Well Ranch in Westwood, and asked what the city's liability is if a plane crashes.

Member of the public Gary Wendell addressed the Council regarding the DNL line and stated that it doesn't make any sense at all. Sound and planes don't travel in those patterns.

Mr. Crider stated that the FAA puts the ownness on the communities and the sponsors to set protections for the Airport.

Mr. Chamberlain added that avigation easements are in place, these are also in the preliminary title reports and other documents.

Mayor Goode commented that the DNL lines are living and will change, need to be able to have this enacted now and have the potential to change in the future. This has been studied and debated to death and it is time for the Council to make a decision.

Councilman Moore commented that he is not ready to move forward, the Council is being asked to make a decision to approve something that was approved by the P&Z in 2022 when some people were not even on the Council. This needs more review and he will not support it.

Councilman Montoya stated that he has similar concerns regarding voting on this. He had a citizen approach him earlier that still really confused about whether or not he is exempted and that is a problem. Needs to be much more clear, he supports passing an AVO but this feels half baked.

Councilman Gambogi stated that everyone is down rabbit holes at this point, he asked the Airport Director if there was anything he has heard that would cause him to change the AVO.

Mr. Crider responded that there is not, he added that residents who have expressed issues with the noise prove that this needs to be passed. This is not perfect but it is a good starting point. The AVO could be modified in the future.

Ms. Walton confirmed but stated that it would be the same process.

Councilwoman Fruhwirth commented that she made a commitment to herself to vote yes when she is positive that it is the right and best thing to do, and she isn't there with this. The discussion around current/future DNLs etc. has her head spinning.

Mayor Goode commented on the fact that if advisory committees vote 5-1 to pass something the Council should take that recommendation, and he isn't prepared to kick this can further.

MOTION BY MAYOR PRO TEM CANTELME TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMEMBER RUSING: PASSED (7 - 0)

MOTION BY COUNCILMEMBER RUSING TO ADOPT RESOLUTION NO. 2025-1911; SECONDED BY MAYOR PRO TEM CANTELME: PASSED (4 - 3) COUNCILWOMAN FRUHWIRTH, COUNCILMAN MONTOYA AND COUNCILMAN MOORE DISSENTING

MOTION BY COUNCILMEMBER RUSING TO ADOPT ORDINANCE NO. 2025-1879; SECONDED BY MAYOR PRO TEM CANTELME: PASSED (4 - 3) COUNCILWOMAN FRUHWIRTH, COUNCILMAN MONTOYA AND COUNCILMAN MOORE DISSENTING.

13. ADJOURNMENT

Quote: "Freedom is a fragile thing and is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free." - Ronald Reagan

There being no further business to discuss, Mayor Goode adjourned the meeting at 7:20 p.m.

PHILIP R. GOODE, Mayor

ATTEST:

SARAH M. SIEP, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Voting Meeting of the City Council Voting Meeting of the City of Prescott, Arizona held on January 14, 2025. I further certify the meeting was duly called and held and that a quorum was present.

Sarah M. Siep, City Clerk

Martin Luther King Day 2025

Since I decided this year not to endorse or approve today's proclamation honoring Martin Luther King Day, I felt a statement explaining my position is appropriate.

I remember very well the year 1968. Martin Luther King was assassinated in April of that year, presidential candidate Robert f. Kennedy was assassinated two months later in June followed by the Black Power fists raised during a medal ceremony during the summer Olympics in Mexico in October.

I always had such tremendous respect for Dr. King and his efforts to achieve civil rights for minorities through his commitment to non-violent protests, civic action and inspirational oratory.

Because of that respect, I've always supported these annual proclamations honoring Dr. King and the annual day of service. The proclamation in 2023 stated Dr. King's commitment to action by non-violence, advancing equality through his dream of a color-blind society where individuals are judged by the content of their character and not the color of their skin and, also to advocate for a community free from discrimination and harassment.

The proclamation I supported last year again restated that commitment to non-violence, and equality. However, this year's proclamation eliminated any reference to non-violence, not opposing harassment and then replacing equality with the word "equity". These are significant changes which I cannot, in good conscience support.

In an article published by the Pacific Legal Foundation it states that "King's movement for racial equality is unrecognizable today. The belief in equality for every individual has been replaced with a push for "equity" and "inclusion" in a system that favors some people over others based on race. This distortion of the civil right movement is a direct contradiction of MLK's goal to eradicate racial discrimination and segregation".

It's time to draw the line on this detestable, incremental attempt to hijack Dr. King's dream and return to his goal of true equality and equal opportunity for everyone. Let's hope we can do that here in Prescott and return to an appropriately worded public proclamation in 2026.



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: City Clerk
ITEM #: 8.B
SUBJECT: Adoption of Resolution No. 2025-1912 Providing Notice of the August 5, 2025 Primary Election and the November 4, 2025 General Election.

ITEM SUMMARY

This item is for the adoption of a Resolution providing notice of both the August 5, 2025 Primary Election and the November 4, 2025 General Election. Staff recommends adoption of the Resolution as presented.

BACKGROUND

The term of Mayor and three (3) Councilmembers will expire in November 2025. Resolution No. 2025-1912 announces the upcoming fall 2025 elections in the City of Prescott as follows:

1. August 5, 2025 - Primary Election
2. November 4, 2025 - General Election

The Prescott City Charter and Arizona Revised Statutes provide for the holding of the City Primary Election on Tuesday, August 5, 2025 and the General Election on Tuesday, November 4, 2025 if needed. Adoption of this Resolution formally calls both of these elections as vote-by-mail.

The City Clerk is authorized to enter into any agreements with the Yavapai County Elections Department and any necessary vendors to provide election services for the August 5, 2025 Primary Election and the November 4, 2025 General Election.

As provided for in the City Charter, candidates for the offices of Mayor and Councilmember who received a majority of valid ballots cast in the primary election are declared elected to the office. If at a primary election there is any office for which no candidate received the majority of all valid ballots cast, then a general election is held to vote for a candidate to fill the office.

FINANCIAL IMPACT

Yavapai County will conduct the 2025 elections for the city as vote-by-mail, and charge a flat fee of \$2.75 per registered voter, per election in accordance with the city's agreement with the county. Other costs associated with the election include vendor services for the preparation, printing, labeling and mailing of ballots and associated materials.

RECOMMENDED ACTION

MOVE to adopt Resolution No. 2025-1912

ATTACHMENTS

1. Resolution No. 2025-1912 Calling for Elections

RESOLUTION NO. 2025-1912

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, PROVIDING NOTICE OF THE PRIMARY AND GENERAL ELECTIONS TO BE HELD ON AUGUST 5, 2025 AND NOVEMBER 4, 2025 RESPECTIVELY; AND AUTHORIZING THE CITY CLERK TO ENTER INTO ANY AGREEMENTS NECESSARY TO PROVIDE SERVICES FOR SUCH ELECTIONS

RECITALS:

WHEREAS, the holding of Primary and General Elections is enabled by law and prescribed by the City of Prescott Charter; and,

WHEREAS, the terms of three (3) City Councilmembers, and the Mayor will expire in November 2025; and,

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott Primary Election will be held on Tuesday, August 5, 2025, for the purpose of nominating/electing candidates for the offices of City Council and Mayor.

Section 2. THAT any candidate who receives a majority of all the valid ballots cast at the Primary Election will be declared elected without running at the General Election.

Section 3. THAT the General Election will be held on November 4, 2025, for the purpose of electing candidates for the offices of City Council and Mayor, if necessary.

Section 4. THAT the City Clerk is authorized to enter into any agreements with the Yavapai County Elections Department and any necessary vendors to provide election services for the August 5, 2025 Primary Election and the November 4, 2025 General Election.

Section 5. THAT said elections shall be vote-by-mail balloting, and otherwise held in accordance with the provisions of applicable State Statutes, City Charter provisions, city code and Ordinances and Resolutions of the City.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of January, 2025.

PHILIP R. GOODE, Mayor

ATTEST:

APPROVED AS TO FORM:

SARAH M. SIEP
City Clerk

JOSEPH L. YOUNG
City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
County of Yavapai) ss.

I, the undersigned Sarah M. Siep, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Resolution No. 2025-1912 is a true, correct and accurate copy of Resolution No. 2025-1912, passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the _____ day of _____ 2025, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 2025.

Seal

City Clerk



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: City Clerk
ITEM #: 8.C
SUBJECT: Approval of Appointment of Member to the
Community Block Grant (CDBG) Citizens
Advisory Committee.

ITEM SUMMARY

This item is presented for consideration and approval of the Council Subcommittee for Appointments recommendation to fill a vacancy on the CDBG Citizens Advisory Committee. Staff recommends filling the vacancy in accordance with the Council Subcommittee on Appointments recommendation in Attachment A.

BACKGROUND

In November 2022, the City Council adopted Resolution No. 2022-1842 which established a Council policy for membership on Boards, Commissions and Committees, and set forth the procedures of making appointments. The appointment process provides for review and recommendation of applicants by the Council Subcommittee for Appointments, and presentation to the full Council for approval.

The Council Subcommittee for Appointments held a meeting on January 9, 2025, to review submitted applications and determine their recommendations for appointments to forward to the City Council for approval.

FINANCIAL IMPACT

None at this time.

RECOMMENDED ACTION

MOVE to approve appointment in accordance with recommendation from the Council Subcommittee on Appointments

ATTACHMENTS

1. Subcommittee on Appointments Recommendation

Community Block Grant (CDBG) Citizens Advisory Committee Term Ending 03/2026	
Elizabeth Howe	Current - 03/2026



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Police
ITEM #: 8.D
SUBJECT: Adoption of Resolution No. 2025-1910 Approving City Contract No. 2025-128 an IGA Between the City of Prescott and Prescott Unified School District for a School Resource Officer for Granite Mountain Middle School.

ITEM SUMMARY

This item is for approval of the intergovernmental agreement (IGA) between the City of Prescott and the Prescott Unified School District (PUSD) for the services of a School Resource Officer (SRO) for the school year starting January 6, 2025 through May 31, 2025 at the Granite Mountain Middle School. Grant funding obtained by PUSD will pay 100% of the cost for this time period.

BACKGROUND

The City of Prescott Police Department requests approval to enter into an IGA with PUSD for School Resource Officer Services at Granite Mountain Middle School.

The partnership between the police department and the school district has been ongoing in a cooperative effort to maintain safer schools, increase positive contact between police officers and students, and to provide ongoing and contemporary law-related education.

The School Resource Officers will be assigned to Granite Mountain Middle School and will provide services there for the duration of the school year. The assigned officers will support the police department's operations during breaks by working in the Community Services Section and the Patrol Section of the police department.

The Granite Mountain Middle School IGA is a new position for FY 2025 and is funded by a grant obtained by PUSD. The PUSD grant will fund 100% of the cost of a Student Resource Officer for the time period of January 6, 2025 through May 31, 2025. In future school years the Student Resource Officer will be funded by the grant at a 75% PUSD and 25% City of Prescott. Approval of future grants will be requested under a separate IGA at a later date.

FINANCIAL IMPACT

There is no financial impact to the City of Prescott as Prescott Unified School District's grant covers 100% of costs of a Student Resource Officer for the time period January 6 to May 31, 2025.

RECOMMENDED ACTION

MOVE to adopt Resolution No. 2025-1910

ATTACHMENTS

1. Resolution No. 2025-1910
2. City Contract No. 2025-128_GMMS School Resources Officer
3. Exhibit A

RESOLUTION NO. 2025-1910

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (“IGA”) WITH THE PRESCOTT UNIFIED SCHOOL DISTRICT FOR A SCHOOL RESOURCE OFFICER FOR GRANITE MOUNTAIN MIDDLE SCHOOL; AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.

RECITALS:

WHEREAS, the City of Prescott (“City”), a municipal corporation of the State of Arizona and the Prescott Unified School District No. 1 of Yavapai County (“School District”), a political subdivision of the State of Arizona, desire to enter into an Intergovernmental Agreement (“IGA”) for the provision of School Resource Officer Services at Granite Mountain Middle School; and,

WHEREAS, A.R.S. §11-952 and the City of Prescott Charter authorize two or more public agencies (including the City and the School District) to contract for services or jointly exercise any powers common to the contracting parties; and,

WHEREAS, it is in the best interests of the City of Prescott to enter into an IGA with the School District for the provision of a School Resource Officer Services for the Granite Mountain Middle School.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT the City of Prescott hereby approves the IGA (City Contract No. 2025-128) between the City and the School District.

SECTION 2. THAT the Mayor and staff are hereby authorized to execute the referenced IGA (City Contract No.2025-128) and to take any and all steps deemed necessary to accomplish the foregoing.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of _____, 2025.

PHILIP R. GOODE, Mayor

ATTEST:

APPROVED AS TO FORM:

SARAH M. SIEP, City Clerk

JOSEPH D. YOUNG, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
County of Yavapai) ss.

I, the undersigned Sarah M. Siep, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Resolution No. is a true, correct and accurate copy of Resolution No. passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the _____ day of _____ 2025, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 2025.

Seal

City Clerk

**City Contract No. 2025-128
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PRESCOTT
AND
PRESCOTT UNIFIED SCHOOL DISTRICT
(SERVICES OF SCHOOL RESOURCE OFFICERS)**

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2025, by and between the City of Prescott, an Arizona municipal corporation ("City"), and the Prescott Unified School District No. 1 of Yavapai County ("District"), a political subdivision of the State of Arizona (the City and District are referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

- A. A.R.S. § 15-154 authorizes the District to place peace officers in its schools in accordance with an approved School Safety Program.
- B. The District is required to make certain reports to local law enforcement under by A.R.S. § 15-341 and A.R.S. § 13-2911.
- C. The District has identified funding to cover one hundred percent (100%) of the total cost for the City to supply one School Resource Officer to provide school resource officer services ("SRO Services") for Granite Mountain Middle School, ("GMMS").
- D. The City and the District desire to enter into an agreement whereby the City will identify a sworn, certified police officer to provide SRO Services at GMMS starting January 6, 2025 through May 31, 2025.
- E. The District is authorized to enter into the Agreement pursuant to A.R.S. §§ 15-342 and 11-952. The City is authorized to enter into this Agreement pursuant to A.R.S. § 11-952 and the City of Prescott Charter.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. General Terms and Conditions

- a. School Safety Program. Upon successful application and award of the School Safety Program grant, the parties agree to participate in the School Safety Program as established by A.R.S. § 15-154 and to accept the guidelines as set out in the School Safety Program Guidance Manual, which is attached as Exhibit A to this Agreement. Each party agrees to assume the roles and responsibilities assigned to that party by the School Safety Program Guidance Manual.

- b. Term. The term of this Agreement shall be from January 6th, 2025 until May 31st, 2025 or the date the District Superintendent designates as the last day of the 2024-2025 school year.
- c. Relationship of Parties.
- i. Independent Contractor Status. The City shall have the status of an independent contractor for the purpose of this Agreement. The School Resource Officer (“SRO”) assigned to the School shall be considered an employee of the City and shall be subject to its control and supervision of the City. The SRO will not be considered a co-employee or “leased employee” of the District in any circumstance. The SRO will be subject to the current procedures in effect for police officers of the Prescott Police Department (“PPD”), including attendance at all mandated training and testing to maintain police officer certification. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The District does not have the authority to supervise or control the actual work of the City, its employees, or its subcontractors.
 - ii. Chain of Command and Channels of Communication. The GMMS Principal or designee will communicate directly with the SRO’s commanding officer about any issues or concerns involving the SRO. If there is an issue that cannot be resolved between the Principal or designee and the commanding officer, the District’s Grants and Federal Programs Coordinator or the Superintendent or his designee will communicate with the commanding officer or his/her superiors, as determined appropriate by the City.
 - iii. Reporting Misconduct. The City understands that the District is responsible for the safety of students on campus during the school day. If either party receives information indicating that any SRO assigned to perform services for the District may have engaged in unprofessional, illegal, or immoral conduct that would affect the SRO’s ability to safely and/or professionally perform duties for the District, the receiving party shall immediately provide such information to the other.
 - iv. Removal and Replacement of SRO. If any alleged unprofessional, illegal, or immoral conduct might affect the SRO’s ability to safely and/or professionally perform duties for the District, the City will immediately remove the SRO from the District and reassign the SRO in accordance with City policies and procedures to allow the City and/or the District to investigate the allegations. The City agrees to assign a replacement SRO to provide services to the District under this Agreement. If a replacement SRO cannot be provided, the District will be credited for each day an SRO is not assigned to GMMS. The District, at its sole discretion, may refuse the assignment to the District of any SRO who has been previously removed from the District because of allegations of unprofessional, illegal, or immoral conduct.
- d. Coordination of Processes to Address Student Misconduct. The Parties will work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

- e. Records. Parties shall maintain the records required in this Agreement for not less than three years after the termination of this Agreement, or for a longer term as required under the State of Arizona public records retention schedules.
- f. Program Continuation Subject to Appropriation. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the City informed as to the availability of funds for this program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Governing Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement. The parties agree that the District has no obligation or duty of good faith to budget or appropriate the payment of the District's obligations set forth in the Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City hereby waives any and all rights to bring any claim against the District arising from or relating in any way to District's termination of this Agreement. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and unfettered legislative decision of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in the Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep the District informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. The District hereby waives any and all rights to bring any claim against the City arising from or relating in any way to City's termination of this Agreement.
- g. Termination. In addition to the termination provisions in Paragraph 1(f) above, either Party may terminate this Agreement for convenience upon thirty (30) days prior written notice to the other Party at the addresses indicated below. Additionally, the five (5) days after the District fails to make reimbursements as required by this Agreement, the City may terminate this Agreement by delivering ten (10) days written notice to the District. The District further has the right to terminate this Agreement at any time that it appears in the reasonable judgment of the District that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment. In such an event, the District shall direct the SRO to return to his/her PPD station and shall immediately contact the SRO's superior officer and/or another person designated by the City by telephone or e-mail to describe the situation and the District's concern. The City, then, shall have seventy-

two (72) hours to correct the problem or to schedule a meeting with the District to attempt to resolve the issue. If the issue cannot be resolved, the District and the City agree:

- i. The City shall supply the District with another certified police officer.
- ii. The City and the District may mutually agree that GMMS will no longer have an SRO for the remainder of the School Year, and the District will not be required to pay for the remainder of the School Year (although the District is required to pay for any work already performed by the SRO).
- iii. The District may terminate the Agreement.

The District shall not be required to pay for the SRO's services during any time the SRO is reassigned to the PPD pending resolution of an issue concerning inappropriate conduct.

- h. Cancellation. This Agreement may be cancelled by either party pursuant to A.R.S. § 38-511.
- i. Dispute Resolution Process. The Parties agree that they shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the Parties are unable to resolve the dispute or claim through negotiations, upon written request of either party, the City's Police Chief or designee, and the School Principal or designee, will attempt to resolve the matter with ten (10) days of the date of the written request that referred the matter to them. If the matter is not resolved, the matter shall be immediately referred to the City Manager or designee and the District Superintendent or designee. If the matter is still not resolved within ten (10) days, the Parties may terminate this Agreement pursuant to Paragraph 1(g) of this Agreement.
- j. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any other agreements or understandings, oral and written, whether previous to the execution of this Agreement or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.
- k. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- l. Workers' Compensation. Any employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post a notice pursuant to A.R.S. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

- m. FERPA Compliance. The Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.
- n. Non-Discrimination. The District nor City will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identify or expression, genetic characteristics, familial status, U.S. military veteran status, or any disability. The District will require any Sub-contractor to be bound to the same requirements as stated within this section. The District, and on behalf of any sub-contractors, warrants compliance with this section.
- o. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
- p. E-Verify. The Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. The Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the noncompliant Party by certified mail of the determination and the right to appeal the determination. To the extent applicable under A.R.S. § 41-4401, the Parties and their subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties also agree that any violation of this requirement shall be deemed a material breach of the contract that is subject to penalties up to and including termination of this Agreement. The Parties acknowledge that the other party retains the legal right to inspect the papers of the other Party's contractor and subcontractor employees that work on this Agreement to verify such compliance.
- q. Fingerprinting Requirements. The City represents and warrants that it will ensure that each officer assigned to perform services on District property pursuant to this Agreement will be fingerprinted and successfully complete a background check performed by the City before such assignment, unless otherwise exempted.
- r. Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the Parties.
- s. Notices. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other addresses as may be given in writing from time to time:

If to the CITY:

Prescott Police Department
Attn: Chief Amy Bonney
222 South Marina Street
Prescott, Arizona 86303

With a copy to: Prescott City Attorney
Attn: Joseph Young
201 N. Montezuma Street
Prescott, Arizona 86301

If to the DISTRICT: Prescott Unified School District
Attn: Clark Tenney, Superintendent
300 E. Gurley Street
Prescott, Arizona 86301

With a copy to: Welker & Pauole PLC
Attn: David Pauole
10429 South 51st Street, #285
Phoenix, Arizona 85044

- t. Time References. All references to “days” within this Agreement mean calendar days, and not business days.
- u. Suspension of Performance due to COVID-19 Pandemic or pursuant to Executive Order. The parties’ respective obligations under Paragraphs 2 and 3, below, shall be suspended during the times that PHS is not having in-person instruction due to the COVID-19 pandemic or is otherwise not having in-person instruction pursuant to executive or administrative order or decision of the District Board. The District shall provide as much advanced notice to the City as is reasonable under the circumstances regarding the suspension of performance and request to resume performance.

2. Obligations of the City

- a. During the School Year, the City shall provide an SRO at GMMS during regularly scheduled school days.
- b. The City will invoice the District for payment of 100% of the assigned SRO’s full salary, including benefits on a monthly basis.
- c. The City agrees that the SRO will be assigned full time to GMMS during the School Year, excluding extenuating circumstances outside the control of either the City or the Prescott Police Department. The City will make every effort to ensure the SRO’s training, vacation and other leaves occur, outside the regularly scheduled school year.

3. Obligations of the District

- a. Within 30 days of billing by the City, the District shall remit to the City, on a monthly basis, the District’s payment as provided in Paragraph 2(b).
- b. The District agrees to pay the City an amount not to exceed \$60,512.00 for the School Year to satisfy the District’s financial obligations under this Agreement, which amount

includes the District's share of the SRO's benefits, salary, and any overtime, but excludes any of the District's indemnity obligations under Section 4, below.

- c. The SRO's time worked at GMMS must be substantiated by time cards and approved by the Principal or his/her designee. The District will pay the cost of the SRO's overtime worked on school related investigations, not to exceed 20 hours annually.
- d. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office shall include the necessary equipment for the SRO to effectively perform his/her duties.
- e. The District will complete an SRO performance assessment once per year. The SRO(s) will assist the Principal with the preparation of the assessment based upon requirements of ADE and the District. The District will share the performance assessment with the SRO's PPD supervisor.
- d. The District shall provide \$100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year.
- f. No District or GMMS administrator shall interfere with the sworn law enforcement duties of a PPD officer. It is agreed, however, that at such times as the SRO is acting within the role of a sworn law enforcement officer but is also acting outside of or in excess of District rules and policies regarding interviewing and searching students and/or the use of appropriate physical force on students, the City shall hold the District harmless from such actions by the SRO. The SRO shall not be responsible for assistance in administrative discipline, unless a definitive danger is perceived by District staff or the student is suspected of engaging in criminal misconduct.

4. Indemnity

To the extent permissible under Arizona law, each Party shall indemnify and hold harmless the other party, their authorized agents, Board members, officers, directors and employees for, from and against all costs, claims, losses, liabilities, penalties, expenses, or other damages, including but not limited to settlements, judgments, court costs, reasonable fees of attorneys and experts, caused by or resulting from the negligent or intentional acts or omissions by that Party, its authorized agents, officers, directors and employees committed in the course of performing its obligations under this Agreement. Nothing in the section shall limit any right to contribution or other allocation of fault between the parties as determined by a court of competent jurisdiction and as permitted by all applicable state and federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2025.

[signature page follows]

CITY OF PRESCOTT

Philip R. Goode, MAYOR

DATE

ATTEST:

Sarah M. Siep, CITY CLERK

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Prescott.

Joseph D. Young
City Attorney

**PRESCOTT UNIFIED SCHOOL DISTRICT
NO. 1 OF YAVAPAI COUNTY**

PRESIDENT
GOVERNING BOARD

DATE

Clark Tenney, SUPERINTENDENT

DATE

Pursuant to A.R.S. Section 11-952(D) and Section 15-342, the foregoing agreement has been reviewed by the undersigned attorney for Prescott Unified School District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to Prescott Unified School District.

David Pauole
Welker & Pauole PLC
Attorney for Prescott Unified School District

EXHIBIT A
SCHOOL SAFETY RESOURCE OFFICER SCOPE OF SERVICES

Attachment: IGA Prescott Unified School District School Resource Officer (2541 : Approval of IGA with PUSD for SRO Services)

SCHOOL RESOURCE OFFICER SCOPE OF SERVICES

WHEREAS, the City of Prescott, a municipal corporation of the State of Arizona and the Prescott Unified School District No. 1 of Yavapai County, a political subdivision of the State of Arizona, do hereby agree that it is mutually beneficial to the parties for Prescott Police Officers to be assigned as School Resource Officers to schools within the City of Prescott, and

WHEREAS, it is understood by the parties that assigned School Resource Officers are employees of the City of Prescott Police Department; and

WHEREAS, the purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities.

NOW THEREFORE, this Scope of Services ("SOS") is being set forth, with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Prescott and Prescott Unified School District No. 1 of Yavapai County ("PUSD") variances, needs and future changes. In addition, this MOU is being issued pursuant to that certain Intergovernmental Agreement between the City of Prescott and PUSD of even date herewith (the "IGA"). In the event of a conflict between the terms of this SOS and the IGA, the terms of the IGA shall control.

This SOS is being set forth to provide universal clarification of expectations, to minimize confusion and to provide for consistency between Officers, Schools, Principals and other parties involved.

The Prescott Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth. In furtherance of that goal, the Prescott Police Department School Resource Officers ("SRO") shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone and a computer to the SRO for his/ her use in the school. The Police Department will provide any required police related equipment to the SROs.

MISSION STATEMENT

Through collaborative efforts, the Prescott Police Department SRO program strives to build positive relationships with students, school staff, parents and community members; to help provide a safe learning environment; working to hold juveniles accountable for their actions and prevent individual problems from developing into patterns of delinquency.

GOALS – SCHOOL RESOURCE OFFICER PROGRAM

The goal of the Prescott Police Department SRO program is to build positive relationships with the youth within the PUSD and private schools within the City of Prescott. In addition, the

program goals include creating a safe learning environment for students, faculty and staff within our schools.

PRESCOTT POLICE DEPARTMENT SCHOOL RESOURCE OFFICER PROGRAM DUTIES & OBJECTIVES

The SROs duties will include, but shall not be limited to the following:

- A. To provide professional contact between the Police Department and the community's youth and the PUSD staff.
- B. To be an extension of the Principal's office for assignments consistent with this agreement
- C. To be a visible, active Law Enforcement figure on campus dealing with law enforcement matters and school code violations originating on the assigned campus.
- D. To act as the designee of the campus administrator in maintaining the physical plant of the assigned campus to provide a safe environment as to law enforcement matters and school code violations. This includes buildings, grounds, parking lots, lockers and other public school property. As to school code violations, the SRO shall take the student to the Principal's office for discipline to be meted out by the school officials.
- E. To provide a classroom resource for law related education using approved materials.
- F. To be a resource for students, to allow students to associate law enforcement figures as role models in the school environment.
- G. To be a resource for teachers, parents and students; to be available for conferences on an individual basis dealing with individual's problems or questions, particularly in the area of substance control.
- H. To make appearances before site councils, parent groups and other groups associated with the campus as a speaker on a variety of requested topics.
- I. The SRO will be involved in school discipline. When it pertains to preventing a disruption that would, if ignored, place students, faculty and staff at risk of harm, the SRO shall resolve the problem to preserve the school climate and safety. As to school code violations, the SRO shall take the student to the Principal's office for discipline to be meted out in the Principal's discretion.
- J. In all other cases, disciplining students is a PUSD responsibility, and the SRO shall take the student to the Principal's office for discipline to be meted out in the Principal's discretion.
- K. It will be the responsibility of the SRO to report all crimes originating on campus. Information on cases that are worked off-campus by the Police Department or other agencies involving students on a campus served by an SRO will be provided to the SRO, but the SRO will not normally be actively involved in off-campus investigations.
- L. The SRO shall share information with the campus administrator about persons and conditions that pertain to campus safety concerns.
- M. The SRO and the Principal will develop plans and strategies to prevent and/or minimize dangerous situations which might result in student unrest.

- N. The SRO may be asked to provide community wide crime prevention presentations that include, but are not limited to:
- Drugs and the law – adult and juvenile related
 - Alcohol and the law – adult and juvenile related
 - Safety programs – adult and juvenile related
 - Bullying programs
 - Sexual assault prevention
- O. The SROs will wear approved Police Department uniforms, formal business attire or business casual with appropriate logos and name badges depending on the time of the school year, the type of school activity or program and the requests of the school and/or Police Department.
- P. The SROs will wear their Department authorized duty weapons in accordance with departmental policy.

IT SHOULD BE RECOGNIZED THAT SROs

- Are encouraged to act and work as a school official when requested, and to work as a team with other school officials for the betterment of students, the school and the neighborhood environment as a whole.
- Are encouraged to work extracurricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. ~~Any~~ work by the SRO in this capacity will be approved through the assigned Prescott Police Department supervisor. This will not relieve the PUSD of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance.
- To the maximum extent allowed by law, the SRO shall keep the school Principal or his/her designee informed about law enforcement action which occurs on school property and/ or which may involve a student. This will occur consistent with the laws of the State of Arizona.
- Prescott Police Department SRO's are generally assigned to the Operations Bureau, Support Section of the Prescott Police Department. As such, their primary responsibilities would be to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, and enforcement of the school code of conduct for the purpose of maintaining a safe and effective learning environment, at the direction of the Prescott Police Department.
- Are to be involved in school discipline. When it pertains to preventing a disruption that would if ignored, place students, faculty and staff at risk of harm, the SRO will resolve the problem to preserve the school climate. In all other cases, disciplining students is a PUSD responsibility, and the SRO may take the student to the Principal's office for discipline to be meted out in the Principal's discretion.
- Are governed by the rules, policies, schedules, procedures and policies of the Prescott Police Department and the City of Prescott, under the supervision of assigned personnel.
- Are expected to attend all training, meetings and appointments assigned by the

- Police Department. It is recognized that some of these will conflict with Officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The Officer shall strive to keep the school Principal or his/her representative informed about his/her absences and/or activities as appropriate.
- At times that school is not in session, the SROs shall be scheduled to work at the direction of his supervisor to meet the needs of the Prescott Police Department.
- Are Police Officers and not school teachers, are not school administrators, and are not school counselors. The SROs will assist teachers with classroom instruction on relative topics when requested and able. They will also work with families, individual students and other school staff with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the SROs, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhoods.
- SROs, school administrators for the respective schools and the assigned Police supervisor shall meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. Quarterly and year-end meetings may be held to determine progress and to make adjustments as needed.

SELECTION & TRAINING CONSIDERATION

SROs will be selected by means of a joint selection committee, comprised of representatives from the PUSD and representatives from the Prescott Police Department who will be designated by the Chief of Police. The selection Committee will make recommendations to the Chief of Police. While he/ she will duly consider the Committee's recommendations, selection of each SRO is within the sole discretion of the Chief of Police.

The Prescott Police Department and the PUSD agree to provide their employees with up to date and adequate training relative to this agreement and its purpose.

PROGRAM ASSESSMENT

The SRO program will be assessed annually, and the evaluation will be conducted jointly between the Prescott Police Department and the PUSD. The following areas, at a minimum shall be used to evaluate the program:

- Success of established goals and objectives
- Accomplishments of tasks agreed upon as part of any work plan

SROs shall remain employees of the Prescott Police Department and shall not be employees of the PUSD. The PUSD acknowledge that the SRO will remain responsive to the command of the Prescott Police Department.

In the event a Principal of a school to which the SRO is assigned feels that the SRO is not effectively performing his or her duties and responsibilities, the Principal shall contact the

Superintendent. Within a reasonable amount of time after the Superintendent receives this information, the Superintendent shall notify the Chief of Police or their designee. A meeting shall be conducted with the SRO to mediate or resolve any problems. The Chief of Police may dismiss or reassign a SRO based upon the Prescott Police Department policies.



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 8.E
SUBJECT: Approval of City Contract No. 2023-211A4, an Amendment to City Contract 2023-211 with J. Banicki Construction, for Construction of the Sundog WWTP Septage Station Improvements Project in the Amount of \$173,602.00. Funding is Budgeted & Available in the Wastewater Fund.

ITEM SUMMARY

This item is to approve City Contract No. 2023-211 A4 with J. Banicki Construction, for Construction of the Sundog Wastewater Treatment Plant (WWTP) Septage Station Improvements Project in the amount of \$173,602.00. The location of the project is shown on the attached vicinity map.

BACKGROUND

The City's Sundog WWTP receives septage from recreational vehicles and commercial haulers at its septage station, located at 1500 Sundog Ranch Rd. which was constructed in the 1980s and has been upgraded several times since. The vehicle offloading area lacks containment for wastewater spills and equipment wash down. During a recent Stormwater Pollution Prevention inspection by ADEQ, the lack of spill containment resulted in a Notice of Opportunity to Correct Deficiencies (NOC). This project is necessary to provide stormwater pollution prevention at the site and to comply with the terms of the NOC.

The work generally consists of removing and replacing the septage station off-load driveway and the installation of a catch basin in the off-load driveway and a containment curb along the perimeter of the septage station vault.

FINANCIAL IMPACT

Funding for this project is available from the Wastewater Fund.

RECOMMENDED ACTION

MOVE to approve City Contract No. 2023-211A4

ATTACHMENTS

1. City Contract No. 2023-211A4
2. Exhibit A - Location Map



Contract Amendment No. Four (4)

Job Order Contracting for Public Works / Horizontal Construction Projects

Sundog WWTP Septage Station Improvement

J. Banicki Construction, Inc.

CIP #: 2411-002

Contract No: 2023-211

Account No(s): 7205855-8930-90023

January 28, 2025

Purpose of Amendment:

To award one hundred seventy-three thousand, six hundred two dollars and zero cents (\$173,602.00) for the Sundog WWTP Septage Station Improvement Project per the terms, conditions and amount quoted in the project specifications and quote attached.

Summary of Contract:

	<i>Description</i>	<i>Amount of Amendment</i>	<i>Total amount Remaining for Fiscal year.</i>
FY2024	Total Contract Available for FY2024		\$ 3,000,000.00
	Amendment 1: FY24 Willow Creek at Rosser, Mill & Overlay	\$ 98,604.20	
	Amendment 2: FY24 Iron Springs Road	\$ 565,783.33	
	Amendment 3: HWY 69 Sewer & Yavapai Hills Water Main	\$ 253,900.56	
	Total Fiscal Year 2024 Unused Balance - FY2024 Closed		<u>\$ 2,081,711.91</u>
FY2025	Total Contract Available for FY2025		\$ 3,000,000.00
	Amendment 4: Sundog WWTP Septage Station Improvement	\$ 173,602.00	
	Total Amount Remaining for other Projects in Fiscal Year 2025		<u>\$ 2,826,398.00</u>

This contract amendment is only for the amount per the quote attached.

All other terms of the original JOC contract remain the same.

SCOPE OF WORK :

The intent of the Plans and Specifications is to prescribe a complete work for the described project which the Contractor shall perform in a manner acceptable to the City Public Works Director and in full compliance with the terms of the Contract.

Unless otherwise specified in the Project Special Provisions (attached), the Contractor shall furnish all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, but not limited to, dust and traffic control measures, and to perform all work involved in executing the Contract in a satisfactory and workmanlike manner within the specified time.

All standard specifications and details referenced, unless otherwise noted, shall conform to all the City of Prescott Standard Specifications and Detail Drawings, most current revisions, and to the most current editions of the Uniform Standard Specifications and Details for Public Works Construction by the Maricopa Association of Governments (MAG Specifications and Details), including revisions thereto.

PROJECT SCHEDULE:

The Contractor shall fully complete all work under this Contract within sixty (60) calendar days beginning with the calendar day as noted in the Notice to Proceed. The Contractor shall at all times during the continuance of the Contract prosecute the work with such work force and equipment as is sufficient to complete the project within the time specified.

The following milestones are estimates of the earliest dates possible for planning purposes only and shall not represent any contractual commitment whatsoever on the part of the City. The City reserves the right to amend the project schedule as necessary.

LIQUIDATED DAMAGES:

All time limits stated in the Contract Documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$430.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$430.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

BONDS:

A. On or before the execution of the Job Order Amendment, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to A.R.S. § 34 222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications, and conditions herein. Such bond shall be solely for the protection of the City. A copy of this bond shall be filed with the Prescott City Clerk.

B. Contractor shall also obtain a payment bond, pursuant to the provisions of A.R.S. § 34 222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.

C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

ITEMS ATTACHED:

Final Payment Acknowledgement

Cost Proposal

Contractor's Affidavit

Amendment 1 Expiration Date: December 31, 2023
Contract Expiration Date: June 30, 2025

Accepted by:

Tim Sherwood, Capital Program Manager

Date

Accepted by:

J. Banicki Construction, Inc.

Date

Approved by: _____
Philip R. Goode, Mayor

Date

Attest: _____
Sarah M. Siep, City Clerk

Date

Approved as to Form: _____
Joseph D. Young, City Attorney

Date

Copy to: City Clerk
Public Works



FINAL PAYMENT ACKNOWLEDGEMENT

To the City of Prescott, Arizona:
J. Banicki Construction, Inc.
2852 N. Navajo Drive, Suite B
Prescott Valley, AZ 86314
mabraham@banicki.com

J. Banicki Construction, Inc, has submitted the final pay application for the Sundog WWTP Septage Station Improvements project Contract No. 2023-211A4 in the consideration of:

\$ _____
(Total Final Project Amount)

as full and complete payment under the terms of the Contract. All materials used and workmanship performed are expressly warranted to be free of defects for a period of twenty-four (24) months from the date of final acceptance by the City of Prescott, as stated in the warranty letter to be provided.

The Undersigned further agrees to indemnify and save harmless the City of Prescott against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said project within the next 90 days.

Signed and dated this _____ day of _____, 20____.

(Authorized Signature)

By: _____

Title: _____

State of _____)
County of _____) ss.

SUBSCRIBED AND SWORN to before me by _____
this _____ day of _____, 20 _____.

Notary Public

Commission Expires

Bidding Schedule

Sundog WWTP Septage Station Improvements						
CIP # 2411-002						
Line No.	Item	Description	Qty	Unit	Unit Cost	Amount
General Construction Items						
1	105	As-Built Drawings (Lyon Engineering)	1	LS	\$3,825.00	\$3,825.00
2	105.8	Construction Stakes, Lines, and Grades	1	LS	\$1,500.00	\$1,500.00
3	107.16	Stormwater Pollution Prevention Plan (SWPPP) - QCSD 105P-2 (No Plan. Use Best Management Practices.)	1	LS	\$2,550.00	\$2,550.00
4	109.10	Mobilization/Demobilization	1	LS	\$12,300.00	\$12,300.00
5	401.2a	Barricades and Storage (No Plan. Use Best Practices Approaching/Around Construction Site)	1	LS	\$3,075.00	\$3,075.00
6	401.2b	Changeable Message Boards (each per day) (2 Message Boards)	60	DY	\$290.00	\$17,400.00
General Construction Items Subtotal					\$40,650.00	
Removals						
7	350	Remove and Dispose of Asphalt Pavement, Including Saw Cutting	144	SY	\$28.00	\$4,032.00
Removals Subtotal					\$4,032.00	
Improvements						
8	310a	Placement and Construction of 8" Aggregate Base Course (ABC) Under Concrete Pavement	104	SY	\$170.00	\$17,680.00
9	310b	Placement and Construction of 10" Aggregate Base Course (ABC) Under Asphalt Pavement	40	SY	\$210.00	\$8,400.00
10	310b	ALTERNATE: Placement and Construction of 8" Aggregate Base Course (ABC) Under Asphalt Pavement (Pair with Item 13)	40	SY	\$170.00	\$6,800.00
11	321	Placement and Construction of 6" Concrete Asphalt Pavement	40	SY	\$260.00	\$10,400.00
12	324	8" Portland Cement Concrete Pavement, Including Joint Saw Cutting	104	SY	\$180.00	\$18,720.00
13	324	ALTERNATE: 6" Portland Cement Concrete Pavement, Including Joint Saw Cutting (Pair with Item 10)	104	SY	\$175.00	\$18,200.00
14	340	Concrete Single Curb Type 'B,' MAG Std. Dtl. 222	58	LF	\$115.00	\$6,670.00
15	420	Install Concrete Mounted Center Stop for Both Gate Drop Rods and Adjust Gates as Necessary to Operate After Improvements - MAG Std. Dtl. 160 Modified	1	LS	\$1,350.00	\$1,350.00
16	505	Install Catch Basin Type 'F,' Including 6-inch Schedule 80 PVC Pipe - MAG Std. Dtl. 535 Modified	1	EA	\$10,900.00	\$10,900.00
17	535	Repair Off Load Bar Screen Structure	1	LS	\$7,100.00	\$7,100.00
18	430	Landscape Restoration - Clean Top Soil and Grading Adjacent Improvements	1	LS	\$3,200.00	\$3,200.00
19	800	Rubberform Recycled Prodcuts, LLC - 6" Spill Containment Berms	52	LF	\$375.00	\$19,500.00
Improvements Subtotal					\$128,920.00	
Total Bid Amount			\$173,602.00			

TOTAL BID AMOUNT:

One Hundred Seventy Three Thousand Six Hundred Two Dollars and Zero Cents
(In Written Words)

Dollars

J. Banicki Construction, Inc.
Company Name



Signature of Company Official

12/4/2024

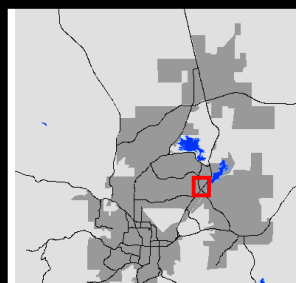
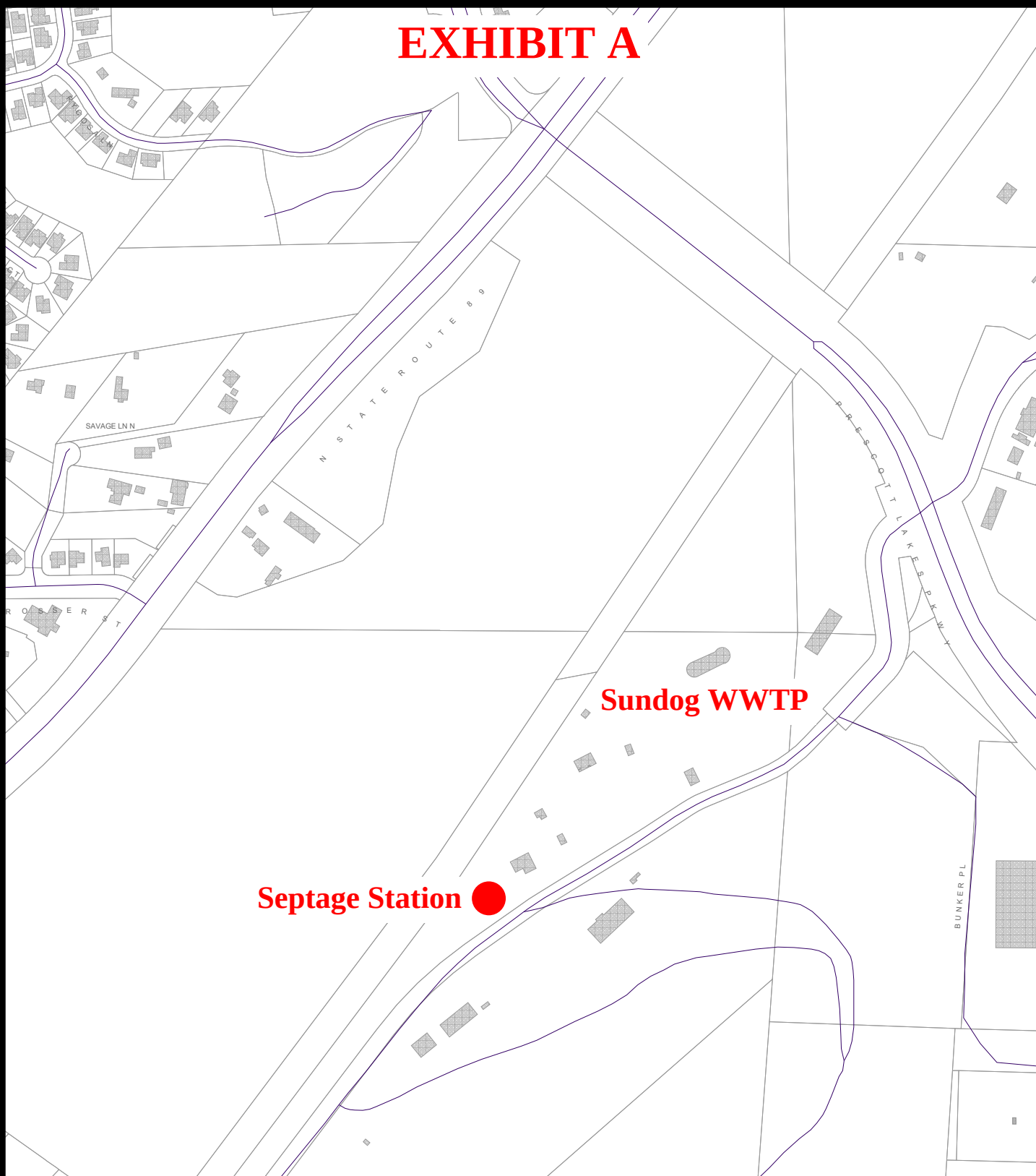
Date Signed

Mike Abraham, President

Title

THREE WEEK LOOK AHEAD SCHEDULE Sundog WWTP 3/3/25 Through 3/30/25																														
	3/1	3/2	3/3	3/4	3/5	3/6	3/7	3/8	3/9	3/10	3/11	3/12	3/13	3/14	3/15	3/16	3/17	3/18	3/19	3/20	3/21	3/22	3/23	3/24	3/25	3/26	3/27	3/28	3/29	3/30
Mobilization			X	X																										
Set Traffic Control (Message boards to be prior to start)			X																											
Sawscut and Demo AC				X																										
Excavate to Subgrade					X	X																								
Excavate Catch Basin										X																				
Core Wet Well for Storm Drain Pipe										X																				
Install Pipe											X																			
Place ABC												X	X																	
Form and Pour Curb																	X	X												
Pour Catch Basin																		X												
Form and pour PCCP																			X	X										
Patch Asphalt																								X						
Chip and Patch																									X	X				
Install Containment Curb																										X	X			

EXHIBIT A



Sundog WWTP
Septage Station
Improvements -
Location Map

This map is a product of
The City of Prescott





TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 8.F
SUBJECT: Approval of City Contract No. 2023-209A4, an Amendment to City Contract No. 2023-209 with Combs Construction Company Inc. for the Construction of the Downtown Bollard Project in an Amount Not to Exceed \$297,790.00. Funding is Budgeted & Available in the Streets Fund.

ITEM SUMMARY

This item is to approve an amendment to City Contract No. 2023-209 with Combs Construction Company Inc. for Phase #1 construction of the Downtown Bollard Project in an amount not to exceed \$297,790.00. The project locations are shown on the attached overall vicinity map and Phase #1 location maps.

BACKGROUND

The goal of this project is to place (Maxi Force) removable bollards at multiple locations throughout downtown, as indicated on the attached vicinity map, to close intersections for parade routes and special events.

The Arizona Department of Homeland Security granted The Police Department grant funds to purchase items to protect our community and to protect the safety of our community. On October 24, 2023 the Prescott Police Department requested approval from Council to accept and spend the grant funds from Arizona Department of Homeland Security for \$45,000 for Street Bollards. These items are to enhance the safety of our community in the downtown area.

In September of 2024 Public Works ordered 32 Removable Bollards for Phase #1 of the Downtown Bollards Project with the Homeland Security Grant Funds. The bollards were delivered to the City on January 14, 2025, and are being stored until Phase #1 construction contract is approved by Council. Phase #1 is scheduled to be constructed in early March with estimated completion before the end of April.

Approval of the purchase of additional Removable Bollards for Phase #2 are also on today's Council consent agenda. Phase #2 is anticipated to start after Labor Day and to be completed by Thanksgiving 2025.

Currently the City uses a combination of bollards (installed from previous projects), vehicles and barricades to close specific intersections for special events and parades. City vehicles must be mobilized, set up and removed for each event. The installation of removable bollards that are specifically designed to stop a vehicle will provide safer closures of intersections by reducing the risk of vehicle intrusion into special events and parades. Not only adding stronger safer closures that will protect the public, it will also help reduce extra costs associated with these events by decreasing overtime, vehicle resources and time used in setting up the vehicles, barricades and personnel needed for these areas to be closed and reopened.

FINANCIAL IMPACT

Funding is available in FY25 from the Streets Fund.

RECOMMENDED ACTION

MOVE to approve City Contract No. 2023-209A4

ATTACHMENTS

1. 2024 Downtown Bollard Map Overall Locations
2. City Contract No. 2023-209A4

Bollard Map 2024

#7

Bollards on south leg
at Sheldon Street

- Currently Installed
- Needed to Complete Parade Route
- Needed to Support Multiple Events

GRANITE ST

MONTEZUMA

CORTEZ

MARINA

Sheldon St

WILLIS ST

GURLEY ST

#11

#12

#1

#2

#13

Court
House

#4

UNION

#14

GOODWIN ST

#6

#9

#10

#5

#8

CARLETON ST



Contract Amendment No. Four (4)

Job Order Contracting for Public Works / Horizontal Construction Projects

Downtown Bollard Replacement

Combs Construction Company, Inc.

CIP #: 2409-001

Contract No: 2023-209

Account #: 2157810-8930-24615

January 28, 2025

Purpose of Amendment:

To award two hundred ninety-seven thousand, seven hundred ninety dollars and zero cents (\$297,790.00) for the Downtown Bollard Replacement Project per the terms, conditions and amount quoted in the project specifications and quote attached.

Summary of Contract:

	<i>Description</i>	<i>Amount of Amendment</i>	<i>Total amount Remaining for Fiscal year.</i>
FY2024	Total Contract Available for FY2024		\$ 3,000,000.00
	Amendment 1: Washington Street Sidewalk Repair	\$ 382,044.00	
	Amendment 2: Prescott Public Library Parking Lot	\$ 421,424.89	
	Total Fiscal Year 2024 Unused Balance - FY2024 Closed		<u>\$ 2,196,531.11</u>
FY2025	Total Contract Available for FY2025		\$ 3,000,000.00
	Amendment 3: Goodwin, Miller Valley, Grove, & Willis Sidewalk Improvements	\$ 352,001.25	
	Amendment 4: Downtown Bollard Replacement	\$ 297,790.00	
	Total Amount Remaining for other Projects in Fiscal Year 2025		<u>\$ 2,350,208.75</u>

This contract amendment is only for the amount per the quote attached.

All other terms of the original JOC contract remain the same.

SCOPE OF WORK :

The intent of the Plans and Specifications is to prescribe a complete work for the described project which the Contractor shall perform in a manner acceptable to the City Public Works Director and in full compliance with the terms of the Contract.

Unless otherwise specified in the Project Special Provisions (attached), the Contractor shall furnish all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, but not limited to, dust and traffic control measures, and to perform all work involved in executing the Contract in a satisfactory and workmanlike manner within the specified time.

All standard specifications and details referenced, unless otherwise noted, shall conform to all the City of Prescott Standard Specifications and Detail Drawings, most current revisions, and to the most current editions of the Uniform Standard Specifications and Details for Public Works Construction by the Maricopa Association of Governments (MAG Specifications and Details), including revisions thereto.

PROJECT SCHEDULE:

The Contractor shall fully complete all work under this Contract within forty (40) calendar days beginning with the calendar day as noted in the Notice to Proceed. The Contractor shall at all times during the continuance of the Contract prosecute the work with such work force and equipment as is sufficient to complete the project within the time specified.

The following milestones are estimates of the earliest dates possible for planning purposes only and shall not represent any contractual commitment whatsoever on the part of the City. The City reserves the right to amend the project schedule as necessary.

LIQUIDATED DAMAGES:

All time limits stated in the Contract Documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$430.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$430.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

BONDS:

A. On or before the execution of the Job Order Amendment, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to A.R.S. § 34 222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications, and conditions herein. Such bond shall be solely for the protection of the City. A copy of this bond shall be filed with the Prescott City Clerk.

B. Contractor shall also obtain a payment bond, pursuant to the provisions of A.R.S. § 34 222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.

C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

ITEMS ATTACHED:

Final Payment Acknowledgement
Contractor's Affidavit

Project Specifications
Cost Proposal

Special Provisions

Amendment 3 Expiration Date: December 31, 2024
Contract Expiration Date: June 30, 2025

Reviewed by:
Tim Sherwood, Capital Program Manager

Date

Accepted by:
Combs Construction Company, Inc.

Date

Approved by:
Gwen Rowitsch, Public Works Director

Date

Approved by: _____
Philip R. Goode, Mayor

Date

Attest: _____
Sarah M. Siep, City Clerk

Date

Approved as to Form: _____
Joseph D. Young, City Attorney

Date

Copy to: City Clerk
Public Works



Page 1 of 1

November 25, 2024

Mr. Thomas Burchfield
City of Prescott
433 N. Virginia Street
Prescott, AZ 86301

Project Name: Downtown Bollard Project JOC
Project No: CIP 2409-001
CCC No: TBD

Re: Downtown Bollard Project JOC Proposal Revised

Dear Mr. Thomas Burchfield,

Please find the attached revised Downtown Bollard Project JOC Proposal for the Downtown Bollard project, submitted for your review and approval.

Please contact me directly should you have any questions or comments.

Sincerely,

Michael Sullivan, Vice President
Combs Construction Company Inc.

cc: Proposal File

Bidding Schedule						
Downtown Bollard Project						
CIP #2409-001						
Line No.	Item	Description	Qty	Unit	Unit Cost	Amount
Bollard Location #1 Gurley & Cortez East						
1	107.15 SP	Public Relations	1	ALL	\$1,500.00	\$ 1,500.00
2	109.10	Mobilization/Demobilization	1	LS	\$12,000.00	\$ 12,000.00
3	109.11	Contract Allowance	1	ALL	\$10,000.00	\$ 10,000.00
4	205.2 SP	Unsuitable Material (Provisionary Item, May not be used)	20	CY	\$218.00	\$ 4,360.00
5	321.1 SP	5" AC Pavement	25	SY	\$300.00	\$ 7,500.00
6	340.1 SP	Class AA Concrete Pavement, 6" Thick With #4 Rebar Doweled 3' O.C. Into Concrete Footing For Bollards (Used If Relocation Is Needed Due To Utility Conflicts)	200	SF	\$32.00	\$ 6,400.00
7	505.1 SP	Install Maxiforce Removable Bollards 13 Ea. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal Of Asphalt/Concrete Is Incidental To Line Item)	1	LS	\$40,000.00	\$ 40,000.00
8		Quality Control	1	LS	\$1,800.00	\$ 1,800.00
					Bollard Location #1 Subtotal	\$ 83,560.00
Bollard Location #2 Gurley & Montezuma West						
1	107.15 SP	Public Relations	1	ALL	\$1,500.00	\$ 1,500.00
2	109.10	Mobilization/Demobilization	1	LS	\$5,700.00	\$ 5,700.00
3	109.11	Contract Allowance	1	ALL	\$10,000.00	\$ 10,000.00
4	205.2 SP	Unsuitable Material (Provisionary Item, May not be used)	20	CY	\$218.00	\$ 4,360.00
5	321.1 SP	5" AC Pavement	25	SY	\$300.00	\$ 7,500.00
6	340.1 SP	Class AA Concrete Pavement, 6" Thick With #4 Rebar Doweled 3' O.C. Into Concrete Footing For Bollards (Used If Relocation Is Needed Due To Utility Conflicts)	200	SF	\$32.00	\$ 6,400.00
7	505.1 SP	Install Maxiforce Removable Bollards 12 Ea. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal Of Asphalt/Concrete Is Incidental To Line Item)	1	LS	\$39,000.00	\$ 39,000.00
8		Quality Control	1	LS	\$1,800.00	\$ 1,800.00
					Bollard Location #2 Subtotal	\$ 76,260.00
Bollard Location #3 Willis & Montezuma West						
1	107.15 SP	Public Relations	1	ALL	\$1,500.00	\$ 1,500.00
2	109.10	Mobilization/Demobilization	1	LS	\$7,700.00	\$ 7,700.00
3	109.11	Contract Allowance	1	ALL	\$10,000.00	\$ 10,000.00
4	205.2 SP	Unsuitable Material (Provisionary Item, May not be used)	25	CY	\$218.00	\$ 5,450.00
5	321.1 SP	5" AC Pavement	27	SY	\$300.00	\$ 8,100.00
6	340.1 SP	Class AA Concrete Pavement, 6" Thick With #4 Rebar Doweled 3' O.C. Into Concrete Footing For Bollards (Used If Relocation Is Needed Due To Utility Conflicts)	220	SF	\$32.00	\$ 7,040.00
7	345.1	Adjust Existing Water Valve Box To Finish Grade	1	EA	\$1,000.00	\$ 1,000.00
8	505.1 SP	Install Maxiforce Removable Bollards 16 Ea. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal Of Asphalt/Concrete Is Incidental To Line Item)	1	LS	\$43,000.00	\$ 43,000.00
8		Quality Control	1	LS	\$1,800.00	\$ 1,800.00
					Bollard Location #3 Subtotal	\$ 85,590.00

Downtown Bollard Project						
Bollard Location #4 Union & Cortez East						
1	107.15 SP	Public Relations	1	ALL	\$1,500.00	\$ 1,500.00
2	109.10	Mobilization/Demobilization	1	LS	\$5,700.00	\$ 5,700.00
3	109.11	Contract Allowance	1	ALL	\$5,000.00	\$ 5,000.00
4	205.2 SP	Unsuitable Material (Provisionary Item, May not be used)	10	CY	\$218.00	\$ 2,180.00
5	340.1 SP	Class AA Concrete Pavement, 6" Thick With #4 Rebar Doweled 3' O.C. Into Concrete Footing For Bollards (Used If Relocation Is Needed Due To Utility Conflicts)	100	SF	\$32.00	\$ 3,200.00
6	505.1 SP	Install Maxiforce Removable Bollards 5 Ea. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal Of Asphalt/Concrete Is Incidental To Line Item)	1	LS	\$33,000.00	\$ 33,000.00
8		Quality Control	1	LS	\$1,800.00	\$ 1,800.00
Bollard Location #4 Subtotal					\$ 52,380.00	
Total Bid Amount			297,790.00			

TOTAL BID AMOUNT:

Two Hundred Ninety Seven Thousand Seven Hundred Ninety Dollars and Zero Cents

Company Name
Signature of Company Official

Date Signed

Title
Email

Estimate Summary**COMBS CONSTRUCTION COMPANY, INC****Job Code: 24-139E City of Prescott Downtown Ballard 1-4****Description: Gurley & Cortez East**

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
1	1.00 ALLOWANCE	Public Relations (\$6,000.00)	0.00	0.00	Detail	U.S. Dollar	0.00	0.00
2	1.00 LS	Mobilization / Demobilization	3.50	0.29	Detail	U.S. Dollar	20,785.88	20,785.88
2.1	1.00 LS	CCC Mobilization	1.50	0.67	Detail	U.S. Dollar	3,135.00	3,135.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		
ETTRANSPORT	COMBS TRANSPORT AND TRAILER	12.00	1.00 Each (hourly)	U.S. Dollar	165.00	1,980.00		
LTRANSPORT	TRANSPORT	15.00	1.25 Each (hourly)	U.S. Dollar	77.00	1,155.00		
2.2	2.00 EA	Paving Mobilization	2.00	1.00	Detail	U.S. Dollar	2,266.00	4,532.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		
ETTRANSPORT	PAVE TRANSPORT	20.00	1.25 Each (hourly)	U.S. Dollar	165.00	3,300.00		
LTRANSPORT	TRANSPORT	16.00	1.00 Each (hourly)	U.S. Dollar	77.00	1,232.00		
2.3	1.00 LS	Traffic Control	0.00	0.00	Detail	U.S. Dollar	13,118.88	13,118.88
2.3.1	4.00 EA	Set Closure & Detour	0.00	0.00	Quote	U.S. Dollar	434.40	1,737.60
Awardee: Hollis Brothers, LLC								
2.3.2	4.00 EA	Tear Down Closure & Detour	0.00	0.00	Quote	U.S. Dollar	434.40	1,737.60
Awardee: Hollis Brothers, LLC								
2.3.3	28.00 EA/DAY	Equipment Rental	0.00	0.00	Quote	U.S. Dollar	141.18	3,953.04
Awardee: Hollis Brothers, LLC								
2.3.4	12.00 EA	Set Message Boards (Not On #4)	0.00	0.00	Quote	U.S. Dollar	119.46	1,433.52
Awardee: Hollis Brothers, LLC								
2.3.5	12.00 EA	Pick Up Message Boards	0.00	0.00	Quote	U.S. Dollar	119.46	1,433.52
Awardee: Hollis Brothers, LLC								
2.3.6	28.00 EA/DAY	Equipment Rental	0.00	0.00	Quote	U.S. Dollar	70.59	1,976.52
Awardee: Hollis Brothers, LLC								
2.3.7	12.00 EA	TCP	0.00	0.00	Quote	U.S. Dollar	70.59	847.08
Awardee: Hollis Brothers, LLC								
3	1.00 ALLOWANCE	Contract Allowance (\$40,000)	0.00	0.00	Detail	U.S. Dollar	0.00	0.00
4	75.00 CY	Unsuitable Material (Provisionary Item, May not be used)	1.00	75.00	Detail	U.S. Dollar	215.09	16,132.00
4.1	75.00 CY	CCC Excavate & Backfill unsuitable Materials	1.00	75.00	Detail	U.S. Dollar	105.49	7,912.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		
LOPER2	OPERATOR GROUP 2	32.00	4.00 Each (hourly)	U.S. Dollar	91.50	2,928.00		
LGRADECHECK	GRADE CHECKER	8.00	1.00 Each (hourly)	U.S. Dollar	92.00	736.00		
ETWATER4000	4000 GALLON WATER TRUCK	8.00	1.00 Each (hourly)	U.S. Dollar	160.00	1,280.00		
EBBACKHOE	BACKHOE	8.00	1.00 Each (hourly)	U.S. Dollar	71.00	568.00		
ETTENWHEELER	TEN WHEELER TRUCK	16.00	2.00 Each (hourly)	U.S. Dollar	150.00	2,400.00		
4.2	135.00 TN	Buy ABC	0.00	0.00	Quote	U.S. Dollar	34.00	4,590.00
Awardee: Cemex (Flagstaff)								
4.3	11.00 Load	Haul Dirt Burden	0.00	0.00	Quote	U.S. Dollar	330.00	3,630.00
Awardee: Donaldson Trucking, Inc.								

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
5	700.00 SF	Class AA Concrete Pavement, 6" Thick with #4 Rebar Doweled 3' O.C. Into Concrete Footing for Bollards (Used If Relocation is Needed Due to Utility Conflicts)	3.00	233.33	Detail	U.S. Dollar	22.41	15,689.00
5.1	14.00 CY	Buy Concrete	0.00	0.00	Detail	U.S. Dollar	198.07	2,773.00
5.1.1	14.00 CY	Buy Mag AA Concrete With High Early 3 Day 3000PSI	0.00	0.00	Quote	U.S. Dollar	173.00	2,422.00
Awardee: Martin Marieta Clarkdale/Prescott								
5.1.2	3.00 EA	Enviro Fee	0.00	0.00	Quote	U.S. Dollar	8.00	24.00
Awardee: Martin Marieta Clarkdale/Prescott								
5.1.3	3.00 EA	Fuel Surcharge	0.00	0.00	Quote	U.S. Dollar	25.00	75.00
Awardee: Martin Marieta Clarkdale/Prescott								
5.1.5	14.00 CY	Excelerator	0.00	0.00	Quote	U.S. Dollar	18.00	252.00
Awardee: Martin Marieta Clarkdale/Prescott								
5.2	200.00 LB	Buy #4 Rebar	0.00	0.00	Plug	U.S. Dollar	0.80	160.00
5.3	700.00 SF	CCC Prep & Place Concrete/Rebar	3.00	233.33	Detail	U.S. Dollar	18.22	12,756.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	24.00	1.00 Each (hourly)	U.S. Dollar	33.00	792.00		
EC4500GEN	4500 GENERATOR	24.00	1.00 Each (hourly)	U.S. Dollar	19.00	456.00		
ECONCTRLR	CONCRETE TRAILER	24.00	1.00 Each (hourly)	U.S. Dollar	24.00	576.00		
ETFLATBED	FLATBED PICKUP	24.00	1.00 Each (hourly)	U.S. Dollar	83.00	1,992.00		
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	24.00	1.00 Each (hourly)	U.S. Dollar	62.00	1,488.00		
LCARP	CARPENTER	48.00	2.00 Each (hourly)	U.S. Dollar	85.75	4,116.00		
LLABOR	GENERAL LABOR	48.00	2.00 Each (hourly)	U.S. Dollar	69.50	3,336.00		
6	1.00 ALLOWANCE	Striping (\$6,000)	0.00	0.00	Detail	U.S. Dollar	0.00	0.00
7	25.00 SY	5" AC Pavement	0.25	100.00	Detail	U.S. Dollar	122.72	3,068.00
7.1	8.00 TN	BUY MAG 3/4 AC	0.00	0.00	Quote	U.S. Dollar	101.00	808.00
Awardee: Vulcan Materials Company								
7.2	1.00 Hour	Haul AC	0.00	0.00	Quote	U.S. Dollar	110.00	110.00
Awardee: Donaldson Trucking, Inc.								
7.3	8.00 TN	Paveco	0.25	32.00	Detail	U.S. Dollar	268.75	2,150.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		
ETPAVETRUCK	PAVING PICKUP	4.00	2.00 Each (hourly)	U.S. Dollar	62.00	248.00		
ECTAMP	PLATE TAMPER	2.00	1.00 Each (hourly)	U.S. Dollar	18.00	36.00		
EGGANNON	PAVE GANNON TRACTOR	2.00	1.00 Each (hourly)	U.S. Dollar	73.00	146.00		
LOPER2	OPERATOR GROUP 2	10.00	5.00 Each (hourly)	U.S. Dollar	91.50	915.00		
LLABOR	GENERAL LABOR	4.00	2.00 Each (hourly)	U.S. Dollar	69.50	278.00		
ERPROLLER	PAVING ROLLER	2.00	1.00 Each (hourly)	U.S. Dollar	125.00	250.00		
LSPER	SUPERINTENDENT	2.00	1.00 Each (hourly)	U.S. Dollar	138.50	277.00		
8	1.00 LS	Install Maxiforce Removable Bollards 13 EA. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal of Asphalt/Concrete is incidental to line item)	4.50	0.22	Detail	U.S. Dollar	22,743.80	22,743.80
8.1	60.00 LF	Saw Cut AC & Concrete Pavement	0.50	120.00	Detail	U.S. Dollar	15.43	926.00
Resource Code	Description	Hours	Quantity UM	Currency	Unit Cost	Total Cost		

Cost Item								
CBS Position Code	Quantity UM	Description	Days	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
ESSAWTRUCK	SAWTRUCK COMBO	4.00	1.00	Each (hourly)	U.S. Dollar		140.00	560.00
LOPER2	OPERATOR GROUP 2	4.00	1.00	Each (hourly)	U.S. Dollar		91.50	366.00
8.2	30.00 SY	Remove AC & Concrete	0.25	120.00	Detail	U.S. Dollar	27.37	821.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOEHAMMER	BACKHOE HAMMER COMBO	2.00	1.00	Each (hourly)	U.S. Dollar		85.00	170.00
EGGANNON	PAVE GANNON TRACTOR	2.00	1.00	Each (hourly)	U.S. Dollar		73.00	146.00
LLABOR	GENERAL LABOR	2.00	1.00	Each (hourly)	U.S. Dollar		69.50	139.00
LOPER2	OPERATOR GROUP 2	4.00	2.00	Each (hourly)	U.S. Dollar		91.50	366.00
8.3	1.00 Load	Haul Broken AC	0.00	0.00	Quote	U.S. Dollar	330.00	330.00
Awardee: Donaldson Trucking, Inc.								
8.4	60.00 LF	CCC Dig Beams	1.00	60.00	Detail	U.S. Dollar	67.47	4,048.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
LOPER2	OPERATOR GROUP 2	16.00	2.00	Each (hourly)	U.S. Dollar		91.50	1,464.00
LGRADECHECK	GRADE CHECKER	8.00	1.00	Each (hourly)	U.S. Dollar		92.00	736.00
ETWATER4000	4000 GALLON WATER TRUCK	8.00	1.00	Each (hourly)	U.S. Dollar		160.00	1,280.00
EBBACKHOE	BACKHOE	8.00	1.00	Each (hourly)	U.S. Dollar		71.00	568.00
8.5	3.00 TN	BUY 57 Rock	0.00	0.00	Quote	U.S. Dollar	91.50	274.50
Awardee: Cemex (Flagstaff)								
8.6	5.00 TN	Buy ABC	0.00	0.00	Quote	U.S. Dollar	34.00	170.00
Awardee: Cemex (Flagstaff)								
8.7	60.00 LF	Place Rock & ABC	0.50	120.00	Detail	U.S. Dollar	17.00	1,020.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOE	BACKHOE	4.00	1.00	Each (hourly)	U.S. Dollar		71.00	284.00
LLABOR	GENERAL LABOR	4.00	1.00	Each (hourly)	U.S. Dollar		69.50	278.00
LOPER2	OPERATOR GROUP 2	4.00	1.00	Each (hourly)	U.S. Dollar		91.50	366.00
EPPLATE TAMP	PLATE TAMPER	4.00	1.00	Each (hourly)	U.S. Dollar		23.00	92.00
8.8	2.00 Load	Haul Dirt Burden	0.00	0.00	Quote	U.S. Dollar	330.00	660.00
Awardee: Donaldson Trucking, Inc.								
8.9	13.00 CY	Buy Concrete	0.00	0.00	Detail	U.S. Dollar	195.85	2,546.00
8.9.1	13.00 CY	Buy Mag AA Concrete High Early 3000PSI 3 Days	0.00	0.00	Quote	U.S. Dollar	173.00	2,249.00
Awardee: Martin Marieta Clarkdale/Prescott								
8.9.2	2.00 EA	Enviro Fee	0.00	0.00	Quote	U.S. Dollar	6.50	13.00
Awardee: Martin Marieta Clarkdale/Prescott								
8.9.3	2.00 EA	Fuel Surcharge	0.00	0.00	Quote	U.S. Dollar	25.00	50.00
Awardee: Martin Marieta Clarkdale/Prescott								
8.9.4	13.00 CY	Exceleator	0.00	0.00	Quote	U.S. Dollar	18.00	234.00
Awardee: Martin Marieta Clarkdale/Prescott								
8.10	60.00 LF	Buy Rebar Detaled	0.00	0.00	Quote	U.S. Dollar	6.38	382.80
Awardee: Tyler Reinforcing								
8.11	60.00 LF	Tie Cage	0.50	120.00	Detail	U.S. Dollar	16.97	1,018.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETFLATBED	FLATBED PICKUP	4.00	1.00	Each (hourly)	U.S. Dollar		83.00	332.00
LCARP	CARPENTER	8.00	2.00	Each (hourly)	U.S. Dollar		85.75	686.00

Cost Item								
CBS Position Code	Quantity UM	Description	Days	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
8.12	1.00 LS	Buy Forming Materials	0.00	0.00	Detail	U.S. Dollar	933.00	933.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
M CURE COMP	CONCRETE CURE COMPOUND		5.00 Gallon		U.S. Dollar		7.00	35.00
M FORM OIL	Form Oil		5.00 Gallon		U.S. Dollar		12.00	60.00
M MISC FORM SUPPLIES	MISC FORMING SUPPLIES		1.00 Each		U.S. Dollar		500.00	500.00
M FORM 1/2" JOINT	1/2" JOINT BIT SHEET		4.00 Each		U.S. Dollar		38.00	152.00
M 2X4 FORM	2X4 FORM LUMBER		3.00 EA		U.S. Dollar		10.00	30.00
M 4X4 FORM	4X4 FORM LUMBER		3.00 Each		U.S. Dollar		17.00	51.00
M 4X8 FORM PLYWOOD	4X8 FORMING PLYWOOD		3.00 Each		U.S. Dollar		35.00	105.00
8.13	1.00 EA	CCC Form And Tie Beam (Beam #1 60' 13 Bollards)	1.25	0.80	Detail	U.S. Dollar	6,867.50	6,867.50
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	10.00	1.00 Each (hourly)		U.S. Dollar		33.00	330.00
EC4500GEN	4500 GENERATOR	10.00	1.00 Each (hourly)		U.S. Dollar		19.00	190.00
ECONCTRLR	CONCRETE TRAILER	10.00	1.00 Each (hourly)		U.S. Dollar		24.00	240.00
ETFLATBED	FLATBED PICKUP	10.00	1.00 Each (hourly)		U.S. Dollar		83.00	830.00
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	10.00	1.00 Each (hourly)		U.S. Dollar		62.00	620.00
LCARP	CARPENTER	30.00	3.00 Each (hourly)		U.S. Dollar		85.75	2,572.50
LLABOR	GENERAL LABOR	30.00	3.00 Each (hourly)		U.S. Dollar		69.50	2,085.00
8.14	1.00 EA	CCC Place & Strip Beam (Beam #1 60' 13 Bollards)	0.50	2.00	Detail	U.S. Dollar	2,747.00	2,747.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	4.00	1.00 Each (hourly)		U.S. Dollar		33.00	132.00
EC4500GEN	4500 GENERATOR	4.00	1.00 Each (hourly)		U.S. Dollar		19.00	76.00
ECONCTRLR	CONCRETE TRAILER	4.00	1.00 Each (hourly)		U.S. Dollar		24.00	96.00
ETFLATBED	FLATBED PICKUP	4.00	1.00 Each (hourly)		U.S. Dollar		83.00	332.00
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	4.00	1.00 Each (hourly)		U.S. Dollar		62.00	248.00
LCARP	CARPENTER	12.00	3.00 Each (hourly)		U.S. Dollar		85.75	1,029.00
LLABOR	GENERAL LABOR	12.00	3.00 Each (hourly)		U.S. Dollar		69.50	834.00
9	1.00 LS	Quality Control	0.00	0.00	Detail	U.S. Dollar	1,487.00	1,487.00
9.1	1.00 LS	Quality Control	0.00	0.00	Quote	U.S. Dollar	1,487.00	1,487.00
Awardee: Ninyo & Moore								
10	25.00 SY	5" AC Pavement	0.50	50.00	Detail	U.S. Dollar	208.72	5,218.00
10.1	8.00 TN	BUY MAG 3/4 AC	0.00	0.00	Plug	U.S. Dollar	101.00	808.00
10.2	1.00 Hour	Haul AC	0.00	0.00	Plug	U.S. Dollar	110.00	110.00
10.3	8.00 TN	Paveco	0.50	16.00	Detail	U.S. Dollar	537.50	4,300.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETPAVETRUCK	PAVING PICKUP	8.00	2.00 Each (hourly)		U.S. Dollar		62.00	496.00
ECTAMP	PLATE TAMPER	4.00	1.00 Each (hourly)		U.S. Dollar		18.00	72.00
EGGANNON	PAVE GANNON TRACTOR	4.00	1.00 Each (hourly)		U.S. Dollar		73.00	292.00
LOPER2	OPERATOR GROUP 2	20.00	5.00 Each (hourly)		U.S. Dollar		91.50	1,830.00
LLABOR	GENERAL LABOR	8.00	2.00 Each (hourly)		U.S. Dollar		69.50	556.00
ERPROLLER	PAVING ROLLER	4.00	1.00 Each (hourly)		U.S. Dollar		125.00	500.00
LSPER	SUPERINTENDENT	4.00	1.00 Each (hourly)		U.S. Dollar		138.50	554.00

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
11	1.00 LS	Install Maxiforce Removable Bollards 12 EA. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal of Asphalt/Concrete is incidental to line item)	4.17	0.24	Detail	U.S. Dollar	21,444.42	21,444.42
11.1	55.00 LF	Saw Cut AC Pavement	0.50	110.00	Detail	U.S. Dollar	16.84	926.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ESSAWTRUCK	SAWTRUCK COMBO	4.00	1.00 Each (hourly)		U.S. Dollar		140.00	560.00
LOPER2	OPERATOR GROUP 2	4.00	1.00 Each (hourly)		U.S. Dollar		91.50	366.00
11.2	30.00 SY	Remove AC	0.25	120.00	Detail	U.S. Dollar	26.43	793.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOE	BACKHOE	2.00	1.00 Each (hourly)		U.S. Dollar		71.00	142.00
EGGANNON	PAVE GANNON TRACTOR	2.00	1.00 Each (hourly)		U.S. Dollar		73.00	146.00
LLABOR	GENERAL LABOR	2.00	1.00 Each (hourly)		U.S. Dollar		69.50	139.00
LOPER2	OPERATOR GROUP 2	4.00	2.00 Each (hourly)		U.S. Dollar		91.50	366.00
11.3	1.00 Load	Haul Broken AC	0.00	0.00	Plug	U.S. Dollar	330.00	330.00
11.4	55.00 LF	CCC Dig Beams	0.92	60.00	Detail	U.S. Dollar	67.47	3,710.67
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
LOPER2	OPERATOR GROUP 2	14.67	2.00 Each (hourly)		U.S. Dollar		91.50	1,342.00
LGRADECHECK	GRADE CHECKER	7.33	1.00 Each (hourly)		U.S. Dollar		92.00	674.67
ETWATER4000	4000 GALLON WATER TRUCK	7.33	1.00 Each (hourly)		U.S. Dollar		160.00	1,173.33
EBBACKHOE	BACKHOE	7.33	1.00 Each (hourly)		U.S. Dollar		71.00	520.67
11.5	3.00 TN	BUY 57 Rock	0.00	0.00	Plug	U.S. Dollar	91.50	274.50
11.6	55.00 LF	Place Rock	0.25	220.00	Detail	U.S. Dollar	8.44	464.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOE	BACKHOE	2.00	1.00 Each (hourly)		U.S. Dollar		71.00	142.00
LLABOR	GENERAL LABOR	2.00	1.00 Each (hourly)		U.S. Dollar		69.50	139.00
LOPER2	OPERATOR GROUP 2	2.00	1.00 Each (hourly)		U.S. Dollar		91.50	183.00
11.7	2.00 Load	Haul Dirt Burden	0.00	0.00	Plug	U.S. Dollar	330.00	660.00
11.8	12.00 CY	Buy Concrete	0.00	0.00	Detail	U.S. Dollar	197.17	2,366.00
11.8.1	12.00 CY	Buy Mag AA Concrete High Early 3000PSI 3 Days	0.00	0.00	Plug	U.S. Dollar	173.00	2,076.00
11.8.2	2.00 EA	Enviro Fee	0.00	0.00	Plug	U.S. Dollar	12.00	24.00
11.8.3	2.00 EA	Fuel Surcharge	0.00	0.00	Plug	U.S. Dollar	25.00	50.00
11.8.4	12.00 CY	Excelelator	0.00	0.00	Plug	U.S. Dollar	18.00	216.00
11.9	55.00 LF	Buy Rebar Detaled	0.00	0.00	Plug	U.S. Dollar	6.45	354.75
11.10	55.00 LF	Tie Cage	0.50	110.00	Detail	U.S. Dollar	18.51	1,018.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETFLATBED	FLATBED PICKUP	4.00	1.00 Each (hourly)		U.S. Dollar		83.00	332.00
LCARP	CARPENTER	8.00	2.00 Each (hourly)		U.S. Dollar		85.75	686.00
11.11	1.00 LS	Buy Forming Materials	0.00	0.00	Detail	U.S. Dollar	933.00	933.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
M CURE COMP	CONCRETE CURE COMPOUND		5.00 Gallon		U.S. Dollar		7.00	35.00
M FORM OIL	Form Oil		5.00 Gallon		U.S. Dollar		12.00	60.00

Cost Item								
CBS	Quantity	Description	Days	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
Position Code	UM							
M MISC FORM SUPPLIES	MISC FORMING SUPPLIES		1.00	Each	U.S. Dollar		500.00	500.00
M FORM 1/2" JOINT	1/2" JOINT BIT SHEET		4.00	Each	U.S. Dollar		38.00	152.00
M 2X4 FORM	2X4 FORM LUMBER		3.00	EA	U.S. Dollar		10.00	30.00
M 4X4 FORM	4X4 FORM LUMBER		3.00	Each	U.S. Dollar		17.00	51.00
M 4X8 FORM PLYWOOD	4X8 FORMING PLYWOOD		3.00	Each	U.S. Dollar		35.00	105.00
11.12	1.00 EA	CCC Form And Tie Beam (Beam #1 55' 12 Bollards)	1.25	0.80	Detail	U.S. Dollar	6,867.50	6,867.50
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost	
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	10.00	1.00	Each (hourly)	U.S. Dollar	33.00	330.00	
EC4500GEN	4500 GENERATOR	10.00	1.00	Each (hourly)	U.S. Dollar	19.00	190.00	
ECONCTRLR	CONCRETE TRAILER	10.00	1.00	Each (hourly)	U.S. Dollar	24.00	240.00	
ETFLATBED	FLATBED PICKUP	10.00	1.00	Each (hourly)	U.S. Dollar	83.00	830.00	
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	10.00	1.00	Each (hourly)	U.S. Dollar	62.00	620.00	
LCARP	CARPENTER	30.00	3.00	Each (hourly)	U.S. Dollar	85.75	2,572.50	
LLABOR	GENERAL LABOR	30.00	3.00	Each (hourly)	U.S. Dollar	69.50	2,085.00	
11.13	1.00 EA	CCC Place & Strip Beam (Beam #1 55' 12 Bollards)	0.50	2.00	Detail	U.S. Dollar	2,747.00	2,747.00
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost	
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	4.00	1.00	Each (hourly)	U.S. Dollar	33.00	132.00	
EC4500GEN	4500 GENERATOR	4.00	1.00	Each (hourly)	U.S. Dollar	19.00	76.00	
ECONCTRLR	CONCRETE TRAILER	4.00	1.00	Each (hourly)	U.S. Dollar	24.00	96.00	
ETFLATBED	FLATBED PICKUP	4.00	1.00	Each (hourly)	U.S. Dollar	83.00	332.00	
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	4.00	1.00	Each (hourly)	U.S. Dollar	62.00	248.00	
LCARP	CARPENTER	12.00	3.00	Each (hourly)	U.S. Dollar	85.75	1,029.00	
LLABOR	GENERAL LABOR	12.00	3.00	Each (hourly)	U.S. Dollar	69.50	834.00	
12	1.00 LS	Quality Control	0.00	0.00	Detail	U.S. Dollar	1,487.00	1,487.00
12.1	1.00 LS	Quality Control	0.00	0.00	Plug	U.S. Dollar	1,487.00	1,487.00
13	27.00 SY	5" AC Pavement	0.25	108.00	Detail	U.S. Dollar	117.37	3,169.00
13.1	9.00 TN	BUY MAG 3/4 AC	0.00	0.00	Plug	U.S. Dollar	101.00	909.00
13.2	1.00 Hour	Haul AC	0.00	0.00	Plug	U.S. Dollar	110.00	110.00
13.3	9.00 TN	Paveco	0.25	36.00	Detail	U.S. Dollar	238.89	2,150.00
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost	
ETPAVETRUCK	PAVING PICKUP	4.00	2.00	Each (hourly)	U.S. Dollar	62.00	248.00	
ECTAMP	PLATE TAMPER	2.00	1.00	Each (hourly)	U.S. Dollar	18.00	36.00	
EGGANNON	PAVE GANNON TRACTOR	2.00	1.00	Each (hourly)	U.S. Dollar	73.00	146.00	
LOPER2	OPERATOR GROUP 2	10.00	5.00	Each (hourly)	U.S. Dollar	91.50	915.00	
LLABOR	GENERAL LABOR	4.00	2.00	Each (hourly)	U.S. Dollar	69.50	278.00	
ERPROLLER	PAVING ROLLER	2.00	1.00	Each (hourly)	U.S. Dollar	125.00	250.00	
LSPER	SUPERINTENDENT	2.00	1.00	Each (hourly)	U.S. Dollar	138.50	277.00	
14	1.00 LS	Install Maxiforce Removable Bollards 16 EA. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal of Asphalt/Concrete is incidental to line item)	4.63	0.22	Detail	U.S. Dollar	23,615.90	23,615.90
14.1	70.00 LF	Saw Cut AC & Concrete Pavement	0.50	140.00	Detail	U.S. Dollar	13.23	926.00
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost	
ESSAWTRUCK	SAWTRUCK COMBO	4.00	1.00	Each (hourly)	U.S. Dollar	140.00	560.00	
LOPER2	OPERATOR GROUP 2	4.00	1.00	Each (hourly)	U.S. Dollar	91.50	366.00	

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
14.2	35.00 SY	Remove AC & Concrete	0.25	140.00	Detail	U.S. Dollar	23.46	821.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOEHAMMER	BACKHOE HAMMER COMBO	2.00	1.00 Each (hourly)		U.S. Dollar		85.00	170.00
EGGANNON	PAVE GANNON TRACTOR	2.00	1.00 Each (hourly)		U.S. Dollar		73.00	146.00
LLABOR	GENERAL LABOR	2.00	1.00 Each (hourly)		U.S. Dollar		69.50	139.00
LOPER2	OPERATOR GROUP 2	4.00	2.00 Each (hourly)		U.S. Dollar		91.50	366.00
14.3	1.00 Load	Haul Broken AC	0.00	0.00	Plug	U.S. Dollar	330.00	330.00
14.4	70.00 LF	CCC Dig Beams	1.00	70.00	Detail	U.S. Dollar	57.83	4,048.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
LOPER2	OPERATOR GROUP 2	16.00	2.00 Each (hourly)		U.S. Dollar		91.50	1,464.00
LGRADECHECK	GRADE CHECKER	8.00	1.00 Each (hourly)		U.S. Dollar		92.00	736.00
ETWATER4000	4000 GALLON WATER TRUCK	8.00	1.00 Each (hourly)		U.S. Dollar		160.00	1,280.00
EBBACKHOE	BACKHOE	8.00	1.00 Each (hourly)		U.S. Dollar		71.00	568.00
14.5	4.00 TN	BUY 57 Rock	0.00	0.00	Plug	U.S. Dollar	91.50	366.00
14.6	6.00 TN	Buy ABC	0.00	0.00	Plug	U.S. Dollar	34.00	204.00
14.7	70.00 LF	Place Rock & ABC	0.50	140.00	Detail	U.S. Dollar	14.57	1,020.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EBBACKHOE	BACKHOE	4.00	1.00 Each (hourly)		U.S. Dollar		71.00	284.00
LLABOR	GENERAL LABOR	4.00	1.00 Each (hourly)		U.S. Dollar		69.50	278.00
LOPER2	OPERATOR GROUP 2	4.00	1.00 Each (hourly)		U.S. Dollar		91.50	366.00
EPPLATE TAMP	PLATE TAMPER	4.00	1.00 Each (hourly)		U.S. Dollar		23.00	92.00
14.8	2.00 Load	Haul Dirt Burden	0.00	0.00	Plug	U.S. Dollar	330.00	660.00
14.9	15.00 CY	Buy Concrete	0.00	0.00	Detail	U.S. Dollar	198.33	2,975.00
14.9.1	15.00 CY	Buy Mag AA Concrete High Early 3000PSI 3 Days	0.00	0.00	Plug	U.S. Dollar	173.00	2,595.00
14.9.2	2.00 EA	Enviro Fee	0.00	0.00	Plug	U.S. Dollar	30.00	60.00
14.9.3	2.00 EA	Fuel Surcharge	0.00	0.00	Plug	U.S. Dollar	25.00	50.00
14.9.4	15.00 CY	Exceleator	0.00	0.00	Plug	U.S. Dollar	18.00	270.00
14.10	70.00 LF	Buy Rebar Detaled	0.00	0.00	Plug	U.S. Dollar	6.37	445.90
14.11	70.00 LF	Tie Cage	0.63	112.00	Detail	U.S. Dollar	18.18	1,272.50
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETFLATBED	FLATBED PICKUP	5.00	1.00 Each (hourly)		U.S. Dollar		83.00	415.00
LCARP	CARPENTER	10.00	2.00 Each (hourly)		U.S. Dollar		85.75	857.50
14.12	1.00 LS	Buy Forming Materials	0.00	0.00	Detail	U.S. Dollar	933.00	933.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
M CURE COMP	CONCRETE CURE COMPOUND		5.00 Gallon		U.S. Dollar		7.00	35.00
M FORM OIL	Form Oil		5.00 Gallon		U.S. Dollar		12.00	60.00
M MISC FORM SUPPLIES	MISC FORMING SUPPLIES		1.00 Each		U.S. Dollar		500.00	500.00
M FORM 1/2" JOINT	1/2" JOINT BIT SHEET		4.00 Each		U.S. Dollar		38.00	152.00
M 2X4 FORM	2X4 FORM LUMBER		3.00 EA		U.S. Dollar		10.00	30.00
M 4X4 FORM	4X4 FORM LUMBER		3.00 Each		U.S. Dollar		17.00	51.00
M 4X8 FORM PLYWOOD	4X8 FORMING PLYWOOD		3.00 Each		U.S. Dollar		35.00	105.00
14.13	1.00 EA	CCC Form And Tie Beam (Beam #1 70' 16 Bollards)	1.25	0.80	Detail	U.S. Dollar	6,867.50	6,867.50

Cost Item									
CBS Position Code	Quantity	UM	Description	Days	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	10.00	1.00	Each (hourly)	U.S. Dollar	33.00	330.00		
EC4500GEN	4500 GENERATOR	10.00	1.00	Each (hourly)	U.S. Dollar	19.00	190.00		
ECONCTRLR	CONCRETE TRAILER	10.00	1.00	Each (hourly)	U.S. Dollar	24.00	240.00		
ETFLATBED	FLATBED PICKUP	10.00	1.00	Each (hourly)	U.S. Dollar	83.00	830.00		
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	10.00	1.00	Each (hourly)	U.S. Dollar	62.00	620.00		
LCARP	CARPENTER	30.00	3.00	Each (hourly)	U.S. Dollar	85.75	2,572.50		
LLABOR	GENERAL LABOR	30.00	3.00	Each (hourly)	U.S. Dollar	69.50	2,085.00		
14.14	1.00 EA	CCC Place & Strip Beam (Beam #1 70' 16 Bollards)		0.50	2.00 Detail	U.S. Dollar	2,747.00	2,747.00	
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	4.00	1.00	Each (hourly)	U.S. Dollar	33.00	132.00		
EC4500GEN	4500 GENERATOR	4.00	1.00	Each (hourly)	U.S. Dollar	19.00	76.00		
ECONCTRLR	CONCRETE TRAILER	4.00	1.00	Each (hourly)	U.S. Dollar	24.00	96.00		
ETFLATBED	FLATBED PICKUP	4.00	1.00	Each (hourly)	U.S. Dollar	83.00	332.00		
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	4.00	1.00	Each (hourly)	U.S. Dollar	62.00	248.00		
LCARP	CARPENTER	12.00	3.00	Each (hourly)	U.S. Dollar	85.75	1,029.00		
LLABOR	GENERAL LABOR	12.00	3.00	Each (hourly)	U.S. Dollar	69.50	834.00		
15	1.00 LS	Quality Control		0.00	0.00 Detail	U.S. Dollar	1,487.00	1,487.00	
15.1	1.00 LS	Quality Control		0.00	0.00 Plug	U.S. Dollar	1,487.00	1,487.00	
16	1.00 LS	Install Maxiforce Removable Bollards 5 EA. (4' O.C.) With Class AA Concrete Footing Per Detail (Saw Cutting, Removal & Disposal of Asphalt/Concrete is incidental to line item)		4.13	0.24 Detail	U.S. Dollar	18,618.22	18,618.22	
16.1	56.00 LF	Saw Cut Concrete Pavement		0.50	112.00 Detail	U.S. Dollar	16.54	926.00	
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
ESSAWTRUCK	SAWTRUCK COMBO	4.00	1.00	Each (hourly)	U.S. Dollar	140.00	560.00		
LOPER2	OPERATOR GROUP 2	4.00	1.00	Each (hourly)	U.S. Dollar	91.50	366.00		
16.2	5.00 SY	Remove Concrete		0.50	10.00 Detail	U.S. Dollar	328.40	1,642.00	
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
EBBACKHOEHAMMER	BACKHOE HAMMER COMBO	4.00	1.00	Each (hourly)	U.S. Dollar	85.00	340.00		
EGGANNON	PAVE GANNON TRACTOR	4.00	1.00	Each (hourly)	U.S. Dollar	73.00	292.00		
LLABOR	GENERAL LABOR	4.00	1.00	Each (hourly)	U.S. Dollar	69.50	278.00		
LOPER2	OPERATOR GROUP 2	8.00	2.00	Each (hourly)	U.S. Dollar	91.50	732.00		
16.3	1.00 Load	Haul Broken AC		0.50	2.00 Plug	U.S. Dollar	330.00	330.00	
16.4	26.00 LF	CCC Dig Beams		0.63	41.60 Detail	U.S. Dollar	97.31	2,530.00	
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
LOPER2	OPERATOR GROUP 2	10.00	2.00	Each (hourly)	U.S. Dollar	91.50	915.00		
LGRADECHECK	GRADE CHECKER	5.00	1.00	Each (hourly)	U.S. Dollar	92.00	460.00		
ETWATER4000	4000 GALLON WATER TRUCK	5.00	1.00	Each (hourly)	U.S. Dollar	160.00	800.00		
EBBACKHOE	BACKHOE	5.00	1.00	Each (hourly)	U.S. Dollar	71.00	355.00		
16.5	2.00 TN	BUY 57 Rock		0.00	0.00 Plug	U.S. Dollar	116.50	233.00	
16.6	60.00 LF	Place Rock		0.50	120.00 Detail	U.S. Dollar	17.00	1,020.00	
Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost		
EBBACKHOE	BACKHOE	4.00	1.00	Each (hourly)	U.S. Dollar	71.00	284.00		
LLABOR	GENERAL LABOR	4.00	1.00	Each (hourly)	U.S. Dollar	69.50	278.00		

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
LOPER2	OPERATOR GROUP 2	4.00	1.00	Each (hourly)	U.S. Dollar		91.50	366.00
EPPLATE TAMP	PLATE TAMPER	4.00	1.00	Each (hourly)	U.S. Dollar		23.00	92.00
16.7	1.00 Load	Haul Dirt Burden	0.00	0.00	Plug	U.S. Dollar	330.00	330.00
16.8	6.00 CY	Buy Concrete	0.00	0.00	Detail	U.S. Dollar	238.83	1,433.00
16.8.1	6.00 CY	Buy Mag AA Concrete High Early 3000PSI 3 Days	0.00	0.00	Plug	U.S. Dollar	173.00	1,038.00
16.8.2	1.00 EA	Enviro Fee	0.00	0.00	Plug	U.S. Dollar	12.00	12.00
16.8.3	1.00 EA	Fuel Surcharge	0.00	0.00	Plug	U.S. Dollar	25.00	25.00
16.8.4	1.00 EA	Short Load Fee	0.00	0.00	Plug	U.S. Dollar	250.00	250.00
16.8.5	6.00 CY	Exceleator	0.00	0.00	Plug	U.S. Dollar	18.00	108.00
16.9	26.00 LF	Buy Rebar Detaled	0.00	0.00	Plug	U.S. Dollar	6.47	168.22
16.10	26.00 LF	Tie Cage	0.50	52.00	Detail	U.S. Dollar	39.15	1,018.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETFLATBED	FLATBED PICKUP	4.00	1.00	Each (hourly)	U.S. Dollar		83.00	332.00
LCARP	CARPENTER	8.00	2.00	Each (hourly)	U.S. Dollar		85.75	686.00
16.11	1.00 LS	Buy Forming Materials	0.00	0.00	Detail	U.S. Dollar	747.00	747.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
M CURE COMP	CONCRETE CURE COMPOUND		5.00	Gallon	U.S. Dollar		7.00	35.00
M FORM OIL	Form Oil		5.00	Gallon	U.S. Dollar		12.00	60.00
M MISC FORM SUPPLIES	MISC FORMING SUPPLIES		1.00	Each	U.S. Dollar		500.00	500.00
M FORM 1/2" JOINT	1/2" JOINT BIT SHEET		4.00	Each	U.S. Dollar		38.00	152.00
M 2X4 FORM	2X4 FORM LUMBER		0.00	EA	U.S. Dollar		10.00	0.00
M 4X4 FORM	4X4 FORM LUMBER		0.00	Each	U.S. Dollar		17.00	0.00
M 4X8 FORM PLYWOOD	4X8 FORMING PLYWOOD		0.00	Each	U.S. Dollar		35.00	0.00
16.12	1.00 EA	CCC Form And Tie Beam (Beam #1 26' 5 Bollards)	1.00	1.00	Detail	U.S. Dollar	5,494.00	5,494.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	8.00	1.00	Each (hourly)	U.S. Dollar		33.00	264.00
EC4500GEN	4500 GENERATOR	8.00	1.00	Each (hourly)	U.S. Dollar		19.00	152.00
ECONCTRLR	CONCRETE TRAILER	8.00	1.00	Each (hourly)	U.S. Dollar		24.00	192.00
ETFLATBED	FLATBED PICKUP	8.00	1.00	Each (hourly)	U.S. Dollar		83.00	664.00
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	8.00	1.00	Each (hourly)	U.S. Dollar		62.00	496.00
LCARP	CARPENTER	24.00	3.00	Each (hourly)	U.S. Dollar		85.75	2,058.00
LLABOR	GENERAL LABOR	24.00	3.00	Each (hourly)	U.S. Dollar		69.50	1,668.00
16.13	1.00 EA	CCC Place & Strip Beam (Beam #1 26' 5 Bollards)	0.50	2.00	Detail	U.S. Dollar	2,747.00	2,747.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
EAIRCOMPRESSOR	180 CFM AIR COMPRESSOR	4.00	1.00	Each (hourly)	U.S. Dollar		33.00	132.00
EC4500GEN	4500 GENERATOR	4.00	1.00	Each (hourly)	U.S. Dollar		19.00	76.00
ECONCTRLR	CONCRETE TRAILER	4.00	1.00	Each (hourly)	U.S. Dollar		24.00	96.00
ETFLATBED	FLATBED PICKUP	4.00	1.00	Each (hourly)	U.S. Dollar		83.00	332.00
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	4.00	1.00	Each (hourly)	U.S. Dollar		62.00	248.00
LCARP	CARPENTER	12.00	3.00	Each (hourly)	U.S. Dollar		85.75	1,029.00
LLABOR	GENERAL LABOR	12.00	3.00	Each (hourly)	U.S. Dollar		69.50	834.00
17	1.00 LS	Quality Control	0.00	0.00	Detail	U.S. Dollar	814.00	814.00
17.1	1.00 LS	Quality Control	0.00	0.00	Plug	U.S. Dollar	814.00	814.00

Cost Item								
CBS Position Code	Quantity UM	Description	Days	Cost UM/Day	Source	Currency	Unit Cost	Total Cost
18	1.00 LS	INDIRECTS	47.00	0.02	Detail	U.S. Dollar	49,314.00	49,314.00
18.1	15.00 EA/DAY	SUPERVISION	15.00	1.00	Detail	U.S. Dollar	1,604.00	24,060.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
LSPER	SUPERINTENDENT	120.00	1.00	Each (hourly)	U.S. Dollar		138.50	16,620.00
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	120.00	1.00	Each (hourly)	U.S. Dollar		62.00	7,440.00
18.2	20.00 Day	Water Trailer	20.00	1.00	Detail	U.S. Dollar	288.00	5,760.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETWATERTANK	500 GALLON WATER TANK	160.00	1.00	Each (hourly)	U.S. Dollar		36.00	5,760.00
18.3	5.00 EA/DAY	ADMIN	5.00	1.00	Detail	U.S. Dollar	888.00	4,440.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
LOFFICE	OFFICE SUPPORT	40.00	1.00	Each (hourly)	U.S. Dollar		63.00	2,520.00
EOFFICECAR	OFFICE CAR	40.00	1.00	Each (hourly)	U.S. Dollar		48.00	1,920.00
18.4	5.00 EA/DAY	PM	5.00	1.00	Detail	U.S. Dollar	1,520.00	7,600.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETPICKUP	PICKUP TRUCK 1/2TN TO 3/4 TN	40.00	1.00	Each (hourly)	U.S. Dollar		62.00	2,480.00
LPROJMAN	PROJECT MANAGER	40.00	1.00	Each (hourly)	U.S. Dollar		128.00	5,120.00
18.5	4.00 Week	J John	0.00	0.00	Plug	U.S. Dollar	300.00	1,200.00
18.6	100.00 MG	Construction Water	0.00	0.00	Plug	U.S. Dollar	5.00	500.00
18.7	1.00 Month	Ice & Water	0.00	0.00	Plug	U.S. Dollar	250.00	250.00
18.8	1.00 LS	CCC Pothole Crew	2.00	0.50	Detail	U.S. Dollar	5,504.00	5,504.00
Resource Code	Description	Hours	Quantity UM		Currency		Unit Cost	Total Cost
ETFLATBED	FLATBED PICKUP	16.00	1.00	Each (hourly)	U.S. Dollar		83.00	1,328.00
EVACTR	VACUUM TRAILER	16.00	1.00	Each (hourly)	U.S. Dollar		100.00	1,600.00
LLABOR	GENERAL LABOR	16.00	1.00	Each (hourly)	U.S. Dollar		69.50	1,112.00
LOPER2	OPERATOR GROUP 2	16.00	1.00	Each (hourly)	U.S. Dollar		91.50	1,464.00
0.2	1.00 Lump Sum	Prime Bond	0.00	0.00	Detail	U.S. Dollar		1,611.13
0.3	1.00 Lump Sum	Price % Add-On TAX and Insurance 3.0%	0.00	0.00	Detail	U.S. Dollar		23,476.40
0.4	1.00 Lump Sum	Job Management & Equipment	0.00	0.00	Detail	U.S. Dollar		0.00
0.5	1.00 Lump Sum	Direct Cost Add-On	0.00	0.00	Detail	U.S. Dollar		0.00
Report Total:			73.42					230,160.74

Category	Total
Labor	73,112.17
Owned Equipment	63,032.00
Rented Equipment	1,200.00
Materials	4,456.00
Subcontract	48,065.55
Fees	25,087.52
Undefined	15,207.50

MaxiForce™ Round Removable and Fixed Steel Bollard Installation Schedule

Various Design Loads at 18" Impact Height

Engineered Anchorage System for Round Steel Bollard

Bollard Size / Model	Soil Lateral Bearing / Bearing Pressure	Design Load (lbs.)	Concrete Pier Diameter (in.)	Concrete Pier Height (in.)	Concrete Pier Reinforcing	Bollard Sleeve / Embedment at Concrete Pier	Concrete Grade Beam Depth (In.)	Concrete Grade Beam Width (In.)	Concrete Grade Beam Reinforcing	
			Individual Footing Option				Continuous Footing Option		Longitudinal	Stirrups
3"	225 psf/f / 2,000 psf	3,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	24	12	4 - #4 cont.	#3 at 11" o.c.
	225 psf/f / 2,000 psf	3,750	18	40	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.
4"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	32	12	4 - #4 cont.	#3 at 14" o.c.
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	32	12	4 - #4 cont.	#3 at 14" o.c.
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	36	12	4 - #4 cont.	#3 at 14" o.c.
5"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	335 psf/f / 2,700 psf	10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	234 psf/f / 2,100 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	171 psf/f / 2,000 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	206 psf/f / 2,300 psf	15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
	210 psf/f / 2,000 psf	15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.
	250 psf/f / 2,000 psf	15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
6"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	335 psf/f / 2,700 psf	10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	234 psf/f / 2,100 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	171 psf/f / 2,000 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	206 psf/f / 2,300 psf	15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
	210 psf/f / 2,000 psf	15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.
	250 psf/f / 2,000 psf	15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
8"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	335 psf/f / 2,700 psf	10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.
	234 psf/f / 2,100 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	171 psf/f / 2,000 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	206 psf/f / 2,300 psf	15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
	210 psf/f / 2,000 psf	15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.
	250 psf/f / 2,000 psf	15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.

Design and Construction Notes:

- Design load location at 18" above finished grade.
- The soil pressure value is shown at design load condition and should be verified that the site soil is adequate for the listed value.
- See supplemental concrete pier / beam details for additional information.
- Material Specifications: Concrete = 3,000 psi (28-day min.); Reinforcing ASTM A615 (60 ksi for all bars #5 and larger/ 40 ksi for all bars #4 and smaller).

Drawing Rev. 1 Created 11/1/2010

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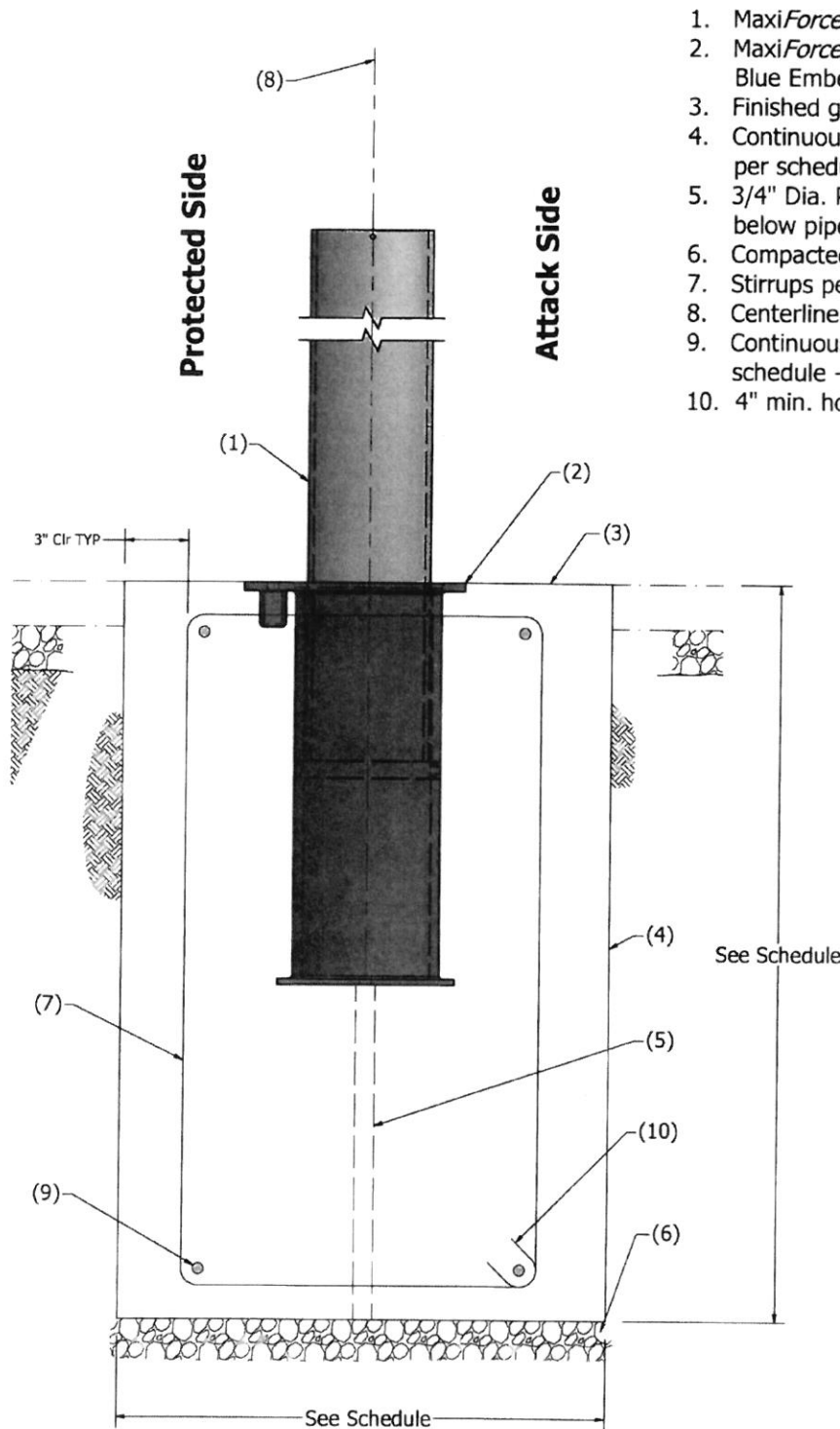
MaxiForce™ Traffic Control Bollards
7560 Main Street
Sykesville, MD 21784
410-552-9888 (phone) - 410-552-9939 (fax)
www.maxiforcebollards.com - sales@maxiforcebollards.com

Model **HD/HDH & MFR Inst Sched (18")**

Size File Name: HD_HDH & MFR Inst Sched (18)

Scale NA DO NOT SCALE DRAWING Sheet 1 Of 1

Engineered Anchorage System for the MaxiForce™ HD and HDH Base Continuous Concrete Beam Footing

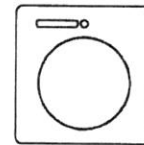


1. MaxiForce™ Steel pipe bollard per specification.
2. MaxiForce™ HD or HDH Base assembly per Blue Ember Technologies.
3. Finished grade or pavement.
4. Continuous concrete grade beam per schedule.
5. 3/4" Dia. PVC pipe as needed for drainage below pipe sleeve.
6. Compacted gravel bed (3" minimum).
7. Stirrups per schedule.
8. Centerline of bollard and concrete grade beam.
9. Continuous longitudinal reinforcement per schedule - lap splice 32" min. for #4 rebars.
10. 4" min. hooks with 135 degree bend - TYP. UNO.

Installation Orientation

Protected Side

HD



HDH



Attack Side

See Schedule

See Schedule

Drawing Rev. 1 Created 11/1/2010

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Model HD/HDH Base Beam Footing

Size C File Name: HD_HDH Base Beam Footing
Scale NA DO NOT SCALE DRAWING Sheet 1 Of 1

Bollard Map 2024

#7
Bollards on south leg
at Sheldon Street

Sheldon St

#3

WILLIS ST

- Currently Installed
- Needed to Complete Parade Route
- Needed to Support Multiple Events

GRANITE ST

MONTEZUMA

CORTEZ

MARINA

GJURLEY ST

#2

#11

#12

#1

#13

Court
House

#4

UNION

GOODWIN ST

#6

#9

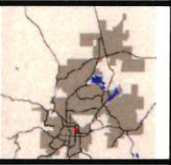
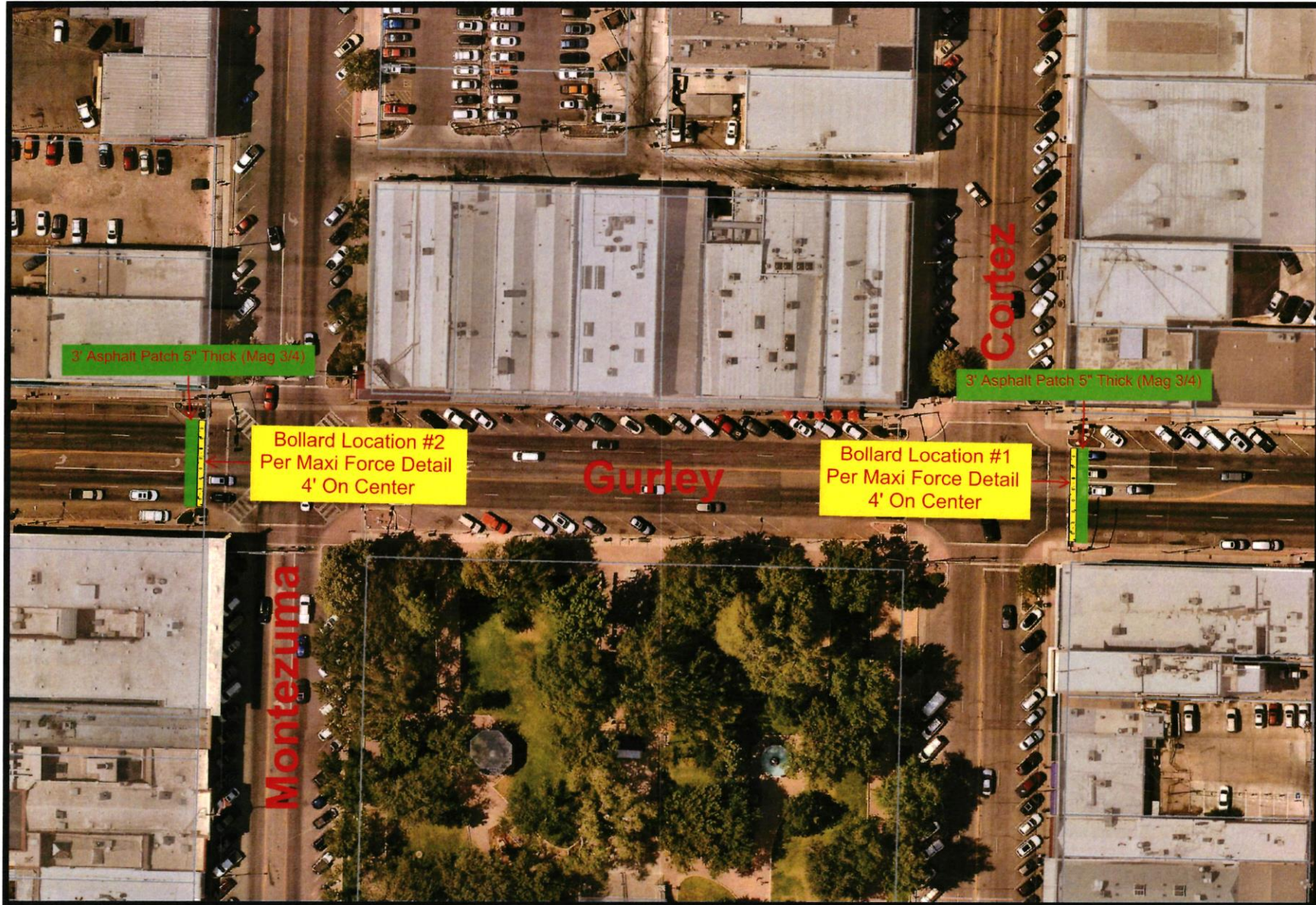
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#14

#5

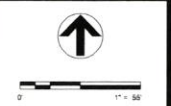
#8

CARLETON ST

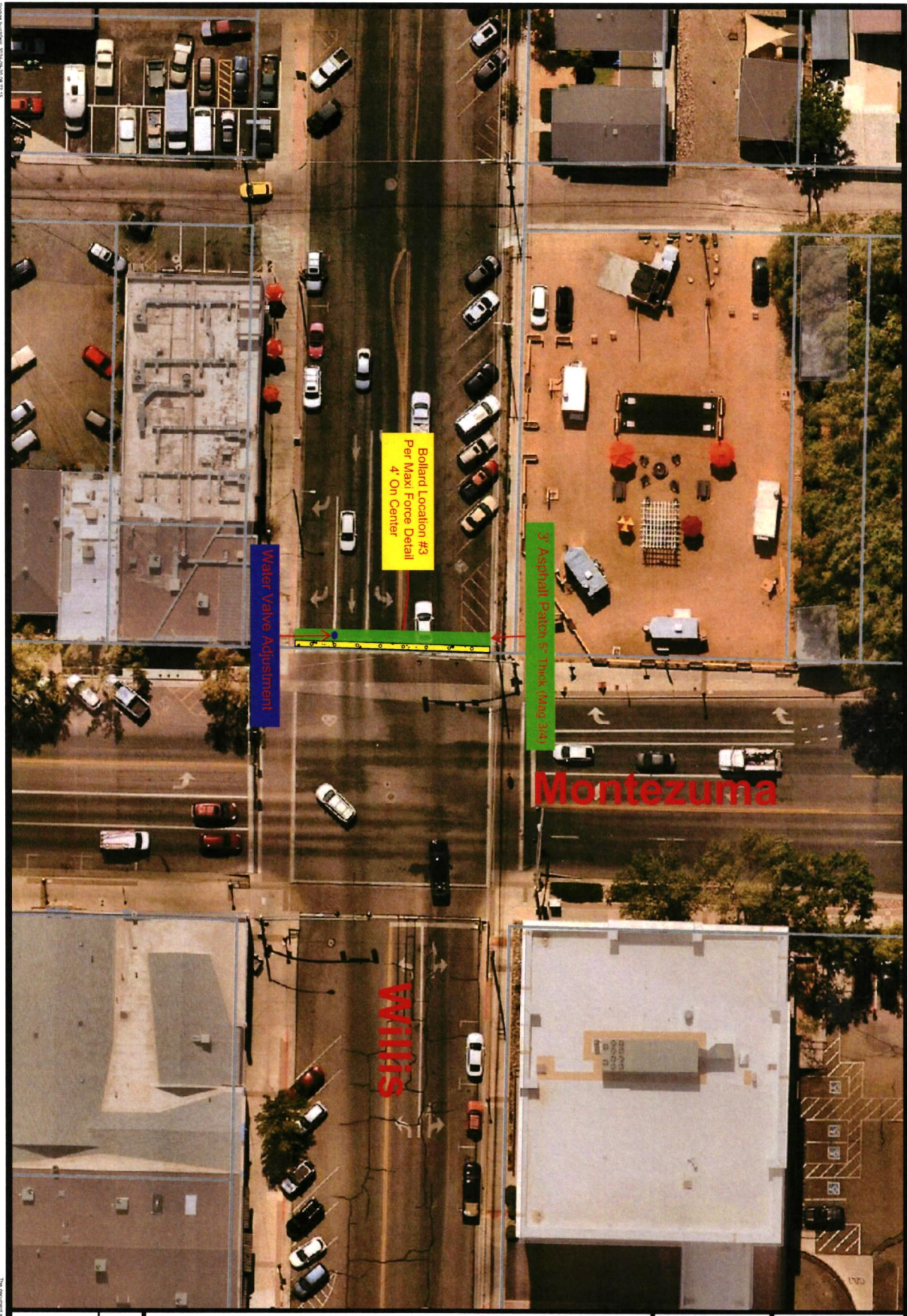


Bollard # 1 Gurley & Cortez
Bollard #2 Gurley & Montezuma

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The City of Prescott



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The City of Prescott assumes no responsibility for any errors.



Source: Aerial Imagery, 2023-09-27 08:27:15

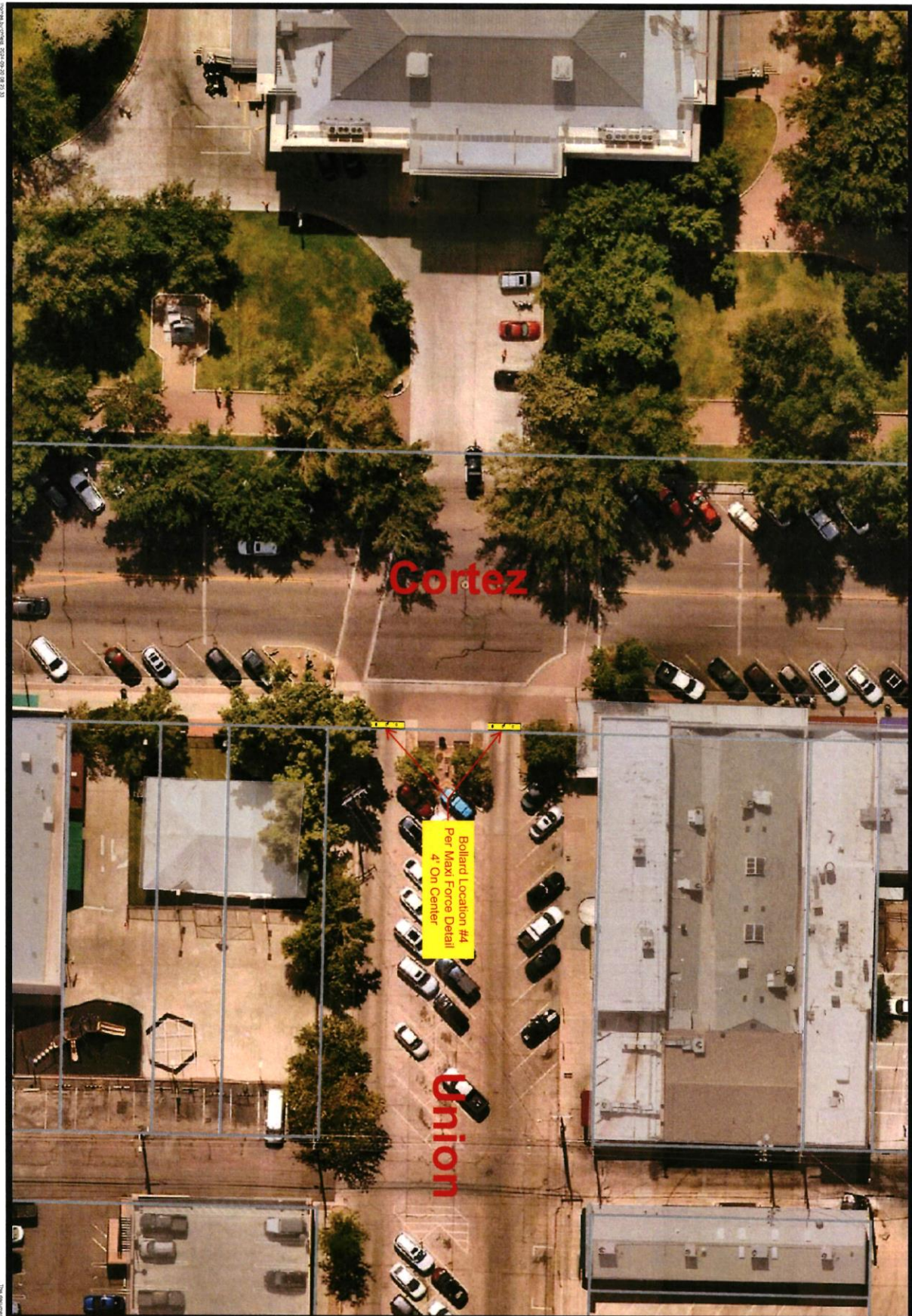
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This map is a product of
The City of Prescott

Bollard #3 Willis St. & Montezuma





 CITY OF PRESCOTT Prescott, Arizona		Bollard #4 Union & Cortez	This map is a product of The City of Prescott  
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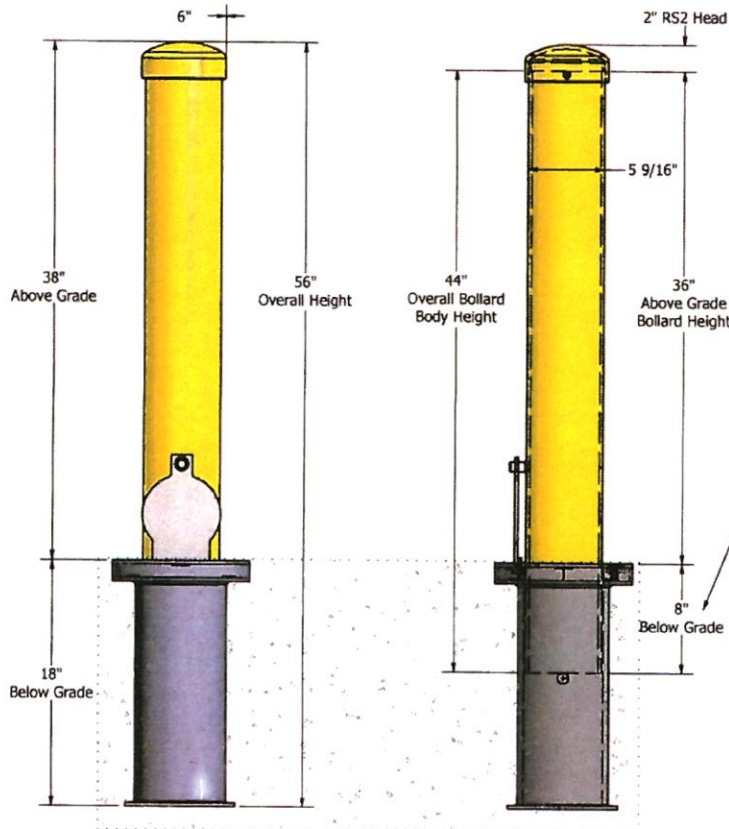
Prescott, Arizona 2024-09-25 10:23

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MaxiForce™ Removable Bollard

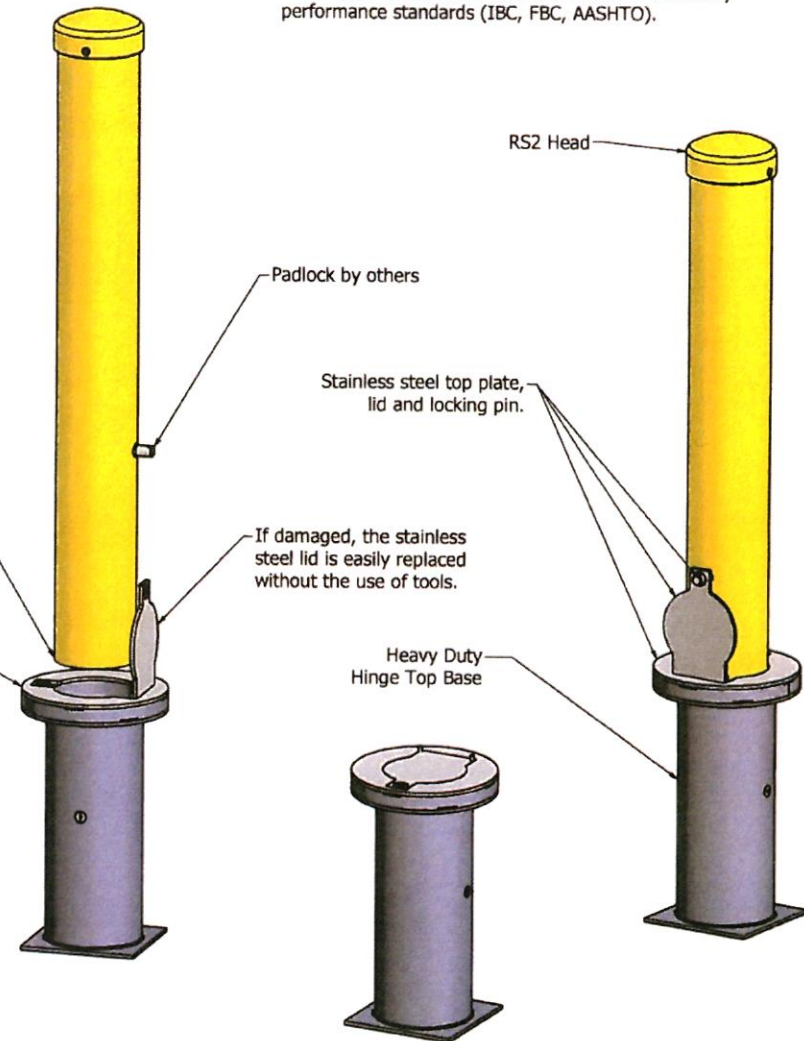
Round HD Body, Padlock Operated, Round Style 2 Head, Heavy Duty Hinge Top Base (5")

Engineered installation details available to meet many performance standards (IBC, FBC, AASHTO).



Only 8" of lifting required to remove the bollard.

Flush surface when bollard is removed. Leaves no tripping hazard and won't catch snowplows or other maintenance equipment.



- No Maintenance / Durable steel construction
- One year warranty / Protected by \$1,000,000 in liability insurance
- No complex assembly required in the field
- Custom sizes, options, colors and finishes available upon request
- Finish options available (add code to the end of the model number)
 - Powder coated (PC)
 - Powder coated with DRYZINC primer (PCZ)
 - Hot dip galvanized (G)
 - Hot dip galvanized & powder coated (GPC)
- Reflective tape available upon request

Bollard Assy. Weight	Base Weight
54 lbs	60 lbs
Drawing Rev.	Created
1	11/2/2009

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Model	MRHP-RS2-HDH5		
File Name	MRHP-RS2-HDH5		
Size	C	Scale	NA
DO NOT SCALE DRAWING	Sheet	1	Of 1

MaxiForce™ Round Removable and Fixed Steel Bollard Installation Schedule

Various Design Loads at 18" Impact Height

Engineered Anchorage System for Round Steel Bollard

Bollard Size / Model	Soil Lateral Bearing / Bearing Pressure	Design Load (lbs.)	Concrete Pier Diameter (in.)	Concrete Pier Height (in.)	Concrete Pier Reinforcing	Bollard Sleeve / Embedment at Concrete Pier	Concrete Grade Beam Depth (In.)	Concrete Grade Beam Width (In.)	Concrete Grade Beam Reinforcing		
			Individual Footing Option				Continuous Footing Option				
									Longitudinal	Stirrups	
3"	225 psf/f / 2,000 psf	3,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	24	12	4 - #4 cont.	#3 at 11" o.c.	
	225 psf/f / 2,000 psf	3,750	18	40	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.	
4"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.	
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	32	12	4 - #4 cont.	#3 at 14" o.c.	
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	26	12	4 - #4 cont.	#3 at 11" o.c.	
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	32	12	4 - #4 cont.	#3 at 14" o.c.	
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	36	12	4 - #4 cont.	#3 at 14" o.c.	
5"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.	
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.	
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
	335 psf/f / 2,700 psf	10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	234 psf/f / 2,100 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
	171 psf/f / 2,000 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	
	206 psf/f / 2,300 psf	15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.	
	210 psf/f / 2,000 psf	15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.	
	250 psf/f / 2,000 psf	15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	
	6"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.
200 psf/f / 2,000 psf		6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
525 psf/f / 3,300 psf		7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.	
250 psf/f / 2,000 psf		7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
175 psf/f / 1,600 psf		7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
335 psf/f / 2,700 psf		10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
234 psf/f / 2,100 psf		10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
171 psf/f / 2,000 psf		10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	
206 psf/f / 2,300 psf		15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.	
210 psf/f / 2,000 psf		15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.	
250 psf/f / 2,000 psf		15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	
8"	418 psf/f / 3,500 psf	6,000	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.	
	200 psf/f / 2,000 psf	6,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	525 psf/f / 3,300 psf	7,500	18	38	4 - #4 vert.	18" Sleeve / 18" Embedment	22	16	4 - #4 cont.	#3 at 9" o.c.	
	250 psf/f / 2,000 psf	7,500	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	175 psf/f / 1,600 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
	335 psf/f / 2,700 psf	10,000	18	48	4 - #4 vert.	18" Sleeve / 18" Embedment	28	16	4 - #4 cont.	#3 at 11" o.c.	
	234 psf/f / 2,100 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.	
	171 psf/f / 2,000 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	
	206 psf/f / 2,300 psf	15,000	18	64	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.	
	210 psf/f / 2,000 psf	15,000	30	54	8 - #4 vert.	18" Sleeve / 18" Embedment	38	16	4 - #4 cont.	#3 at 11" o.c.	
	250 psf/f / 2,000 psf	15,000	36	48	8 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.	

Design and Construction Notes:

- Design load location at 18" above finished grade.
- The soil pressure value is shown at design load condition and should be verified that the site soil is adequate for the listed value.
- See supplemental concrete pier / beam details for additional information.
- Material Specifications: Concrete = 3,000 psi (28-day min.); Reinforcing ASTM A615 (60 ksi for all bars #5 and larger/ 40 ksi for all bars #4 and smaller).

Drawing Rev. 1 Created 11/1/2010

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Model **HD/HDH & MFR Inst Sched (18")**

Size C File Name HD_HDH & MFR Inst Sched (18")
Scale NA DO NOT SCALE DRAWING Sheet 1 Of 1

MaxiForce™ Round Removable and Fixed Steel Bollard Installation Schedule

Various Design Loads at 27" Impact Height

Engineered Anchorage System for Round Steel Bollard

Bollard Size / Model	Soil Lateral Bearing / Bearing Pressure	Design Load (lbs.)	Concrete Pier Diameter (in.)	Concrete Pier Height (in.)	Concrete Pier Reinforcing	Bollard Sleeve / Embedment at Concrete Pier	Concrete Grade Beam Depth (In.)	Concrete Grade Beam Width (In.)	Concrete Grade Beam Reinforcing Longitudinal	Concrete Grade Beam Reinforcing Stirrups
			Individual Footing Option				Continuous Footing Option			
3"	225 psf/f / 2,000 psf	3,000	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	28	12	4 - #4 cont.	#3 at 12" o.c.
	N/A	3,750	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4"	450 psf/f / 3,500 psf	6,000	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	28	12	4 - #4 cont.	#3 at 12" o.c.
	210 psf/f / 2,000 psf	6,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	36	12	4 - #4 cont.	#3 at 14" o.c.
	N/A	7,500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5"	450 psf/f / 3,500 psf	6,000	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.	#3 at 11" o.c.
	210 psf/f / 2,000 psf	6,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	558 psf/f / 5,000 psf	7,500	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.	#3 at 11" o.c.
	263 psf/f / 3,500 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	192 psf/f / 2,000 psf	7,500	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	350 psf/f / 3,200 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	256 psf/f / 2,600 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	192 psf/f / 2,100 psf	10,000	18	66	4 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
	N/A	15,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	6"	450 psf/f / 3,500 psf	6,000	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.
210 psf/f / 2,000 psf		6,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
558 psf/f / 5,000 psf		7,500	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.	#3 at 11" o.c.
263 psf/f / 3,500 psf		7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
192 psf/f / 2,000 psf		7,500	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
350 psf/f / 3,200 psf		10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
256 psf/f / 2,600 psf		10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
192 psf/f / 2,100 psf		10,000	18	66	4 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
236 psf/f / 2,800 psf		15,000	18	70	8 - #4 vert.	18" Sleeve / 18" Embedment	42	16	4 - #4 cont.	#3 at 11" o.c.
248 psf/f / 2,500 psf		15,000	30	58	8 - #4 vert.	18" Sleeve / 18" Embedment	42	16	4 - #4 cont.	#3 at 11" o.c.
286 psf/f / 2,500 psf		15,000	36	52	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
8"		450 psf/f / 3,500 psf	6,000	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.
	210 psf/f / 2,000 psf	6,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	558 psf/f / 5,000 psf	7,500	18	42	4 - #4 vert.	18" Sleeve / 18" Embedment	26	16	4 - #4 cont.	#3 at 11" o.c.
	263 psf/f / 3,500 psf	7,500	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	192 psf/f / 2,000 psf	7,500	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	350 psf/f / 3,200 psf	10,000	18	54	4 - #4 vert.	18" Sleeve / 18" Embedment	34	16	4 - #4 cont.	#3 at 11" o.c.
	256 psf/f / 2,600 psf	10,000	18	60	4 - #4 vert.	18" Sleeve / 18" Embedment	36	16	4 - #4 cont.	#3 at 11" o.c.
	192 psf/f / 2,100 psf	10,000	18	66	4 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.
	236 psf/f / 2,800 psf	15,000	18	70	8 - #4 vert.	18" Sleeve / 18" Embedment	42	16	4 - #4 cont.	#3 at 11" o.c.
	248 psf/f / 2,500 psf	15,000	30	58	8 - #4 vert.	18" Sleeve / 18" Embedment	42	16	4 - #4 cont.	#3 at 11" o.c.
	286 psf/f / 2,500 psf	15,000	36	52	8 - #4 vert.	18" Sleeve / 18" Embedment	40	16	4 - #4 cont.	#3 at 11" o.c.

Design and Construction Notes:

- Design load location at 27" above finished grade.
- The soil pressure value is shown at design load condition and should be verified that the site soil is adequate for the listed value.
- See supplemental concrete pier / beam details for additional information.
- Material Specifications: Concrete = 3,000 psi (28-day min.); Reinforcing ASTM A615 (60 ksi for all bars #5 and larger/ 40 ksi for all bars #4 and smaller).

Drawing Rev. 1 Created 11/1/2010

PROPRIETARY AND CONFIDENTIAL

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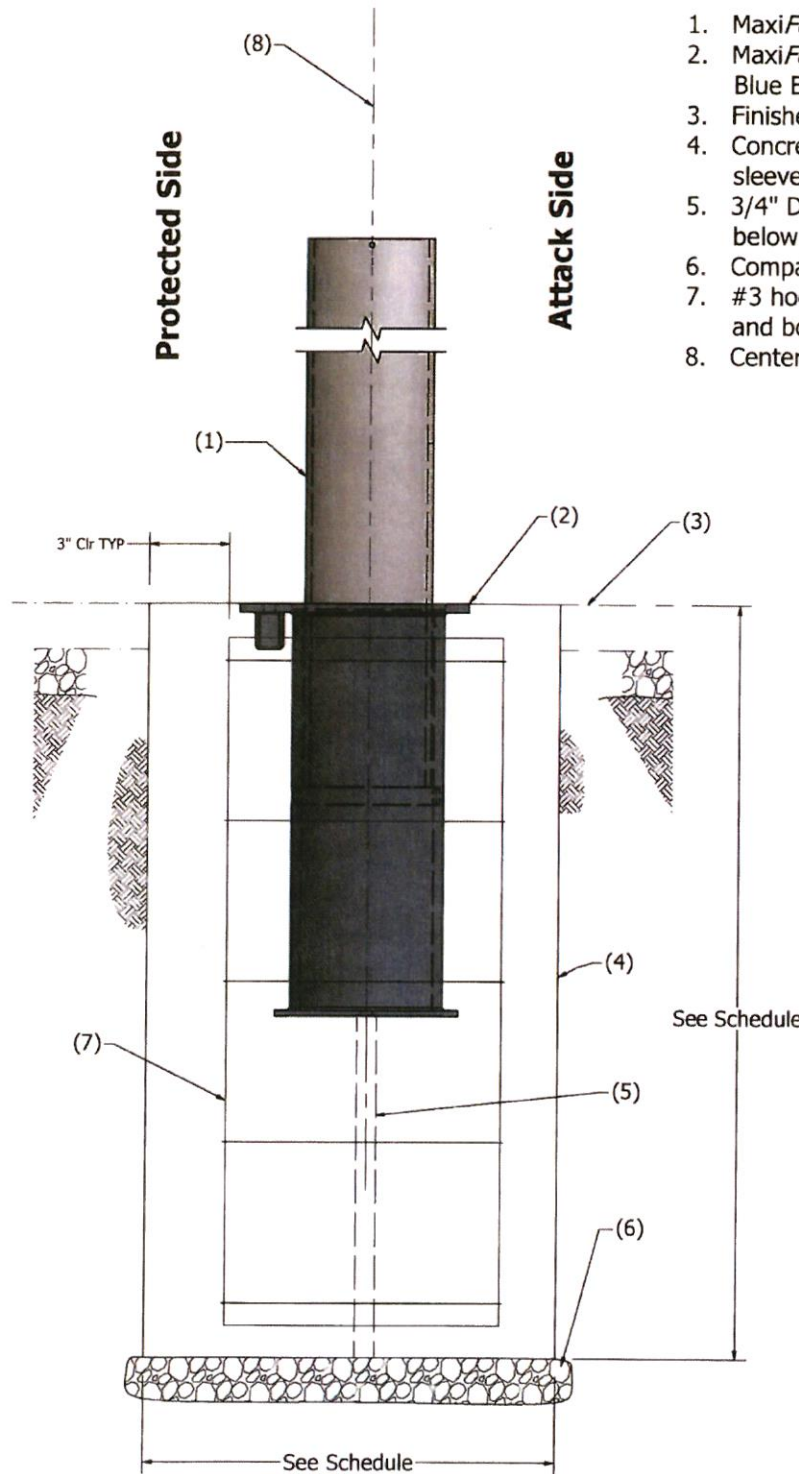
MaxiForce™ Traffic Control Bollards
 7560 Main Street
 Sykesville, MD 21784
 410-552-9888 (phone) - 410-552-9939 (fax)
 www.maxiforcebollards.com - sales@maxiforcebollards.com

Model **HD/HDH & MFR Inst Sched (27")**

Size C File Name HD_HDH & MFR Inst Sched (27")

Scale NA DO NOT SCALE DRAWING Sheet 1 Of 1

Engineered Anchorage System for the MaxiForce™ HD and HDH Base Circular Concrete Pier Footing

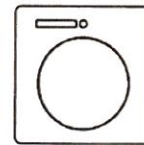


1. MaxiForce™ Steel pipe bollard per specification.
2. MaxiForce™ HD or HDH Base assembly per Blue Ember Technologies.
3. Finished grade or pavement.
4. Concrete base pier per schedule at each pipe sleeve.
5. 3/4" Dia. PVC pipe as needed for drainage below pipe sleeve.
6. Compacted gravel bed (3" minimum).
7. #3 hoop ties at 12" O.C. and 2 - #3 ties at top and bottom of concrete pier.
8. Centerline of bollard and concrete base pier.

Installation Orientation

Protected Side

HD

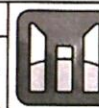


HDH



Attack Side

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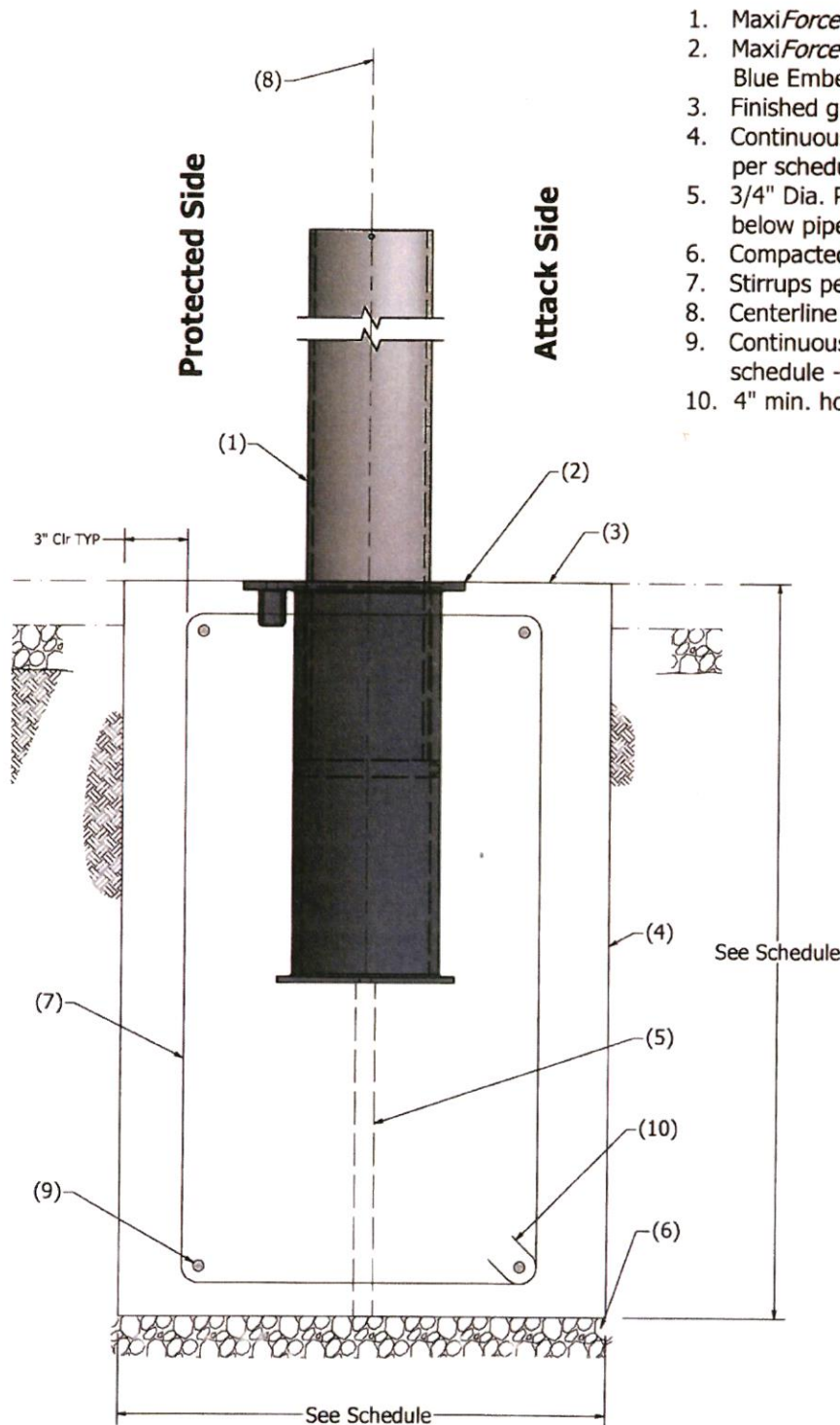


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Model **HD/HDH Base Pier Footing**

Size C File Name HD_HDH Base Pier Footing
 Scale NA DO NOT SCALE DRAWING Sheet 1 Of 1

Engineered Anchorage System for the MaxiForce™ HD and HDH Base Continuous Concrete Beam Footing

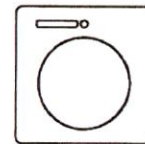


1. MaxiForce™ Steel pipe bollard per specification.
2. MaxiForce™ HD or HDH Base assembly per Blue Ember Technologies.
3. Finished grade or pavement.
4. Continuous concrete grade beam per schedule.
5. 3/4" Dia. PVC pipe as needed for drainage below pipe sleeve.
6. Compacted gravel bed (3" minimum).
7. Stirrups per schedule.
8. Centerline of bollard and concrete grade beam.
9. Continuous longitudinal reinforcement per schedule - lap splice 32" min. for #4 rebars.
10. 4" min. hooks with 135 degree bend - TYP. UNO.

Installation Orientation

Protected Side

HD



HDH



Attack Side

See Schedule

Drawing Rev. 1 Created 11/1/2010

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Model **HD/HDH Base Beam Footing**

Size

C

File Name HD_HDH Base Beam Footing

Scale

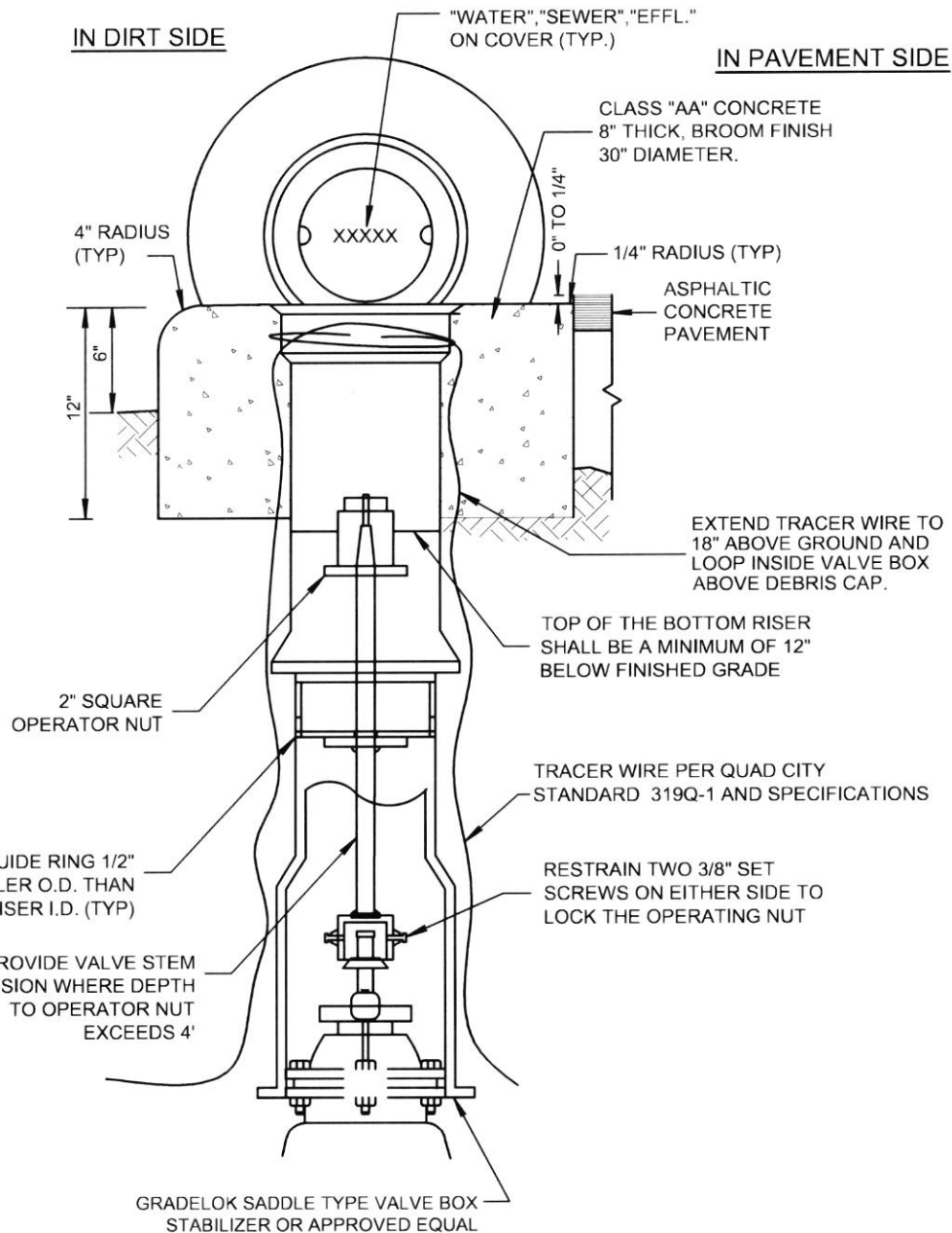
NA

DO NOT SCALE DRAWING

Sheet

1

Of 1



NOTES:

1. VALVE BOX SHALL BE ADJUSTED TO THE FINISHED GRADE AFTER PLACING OF THE FINISH PAVEMENT SURFACE.
2. USE PARKSON TYLER #6855, APCO OR EQUAL DEEP SKIRTED LID (4" OR MORE) TYPE, SLIDING ADJUSTABLE CAST IRON VALVE BOX C.I. MIN. T.S. 30,000 P.S.I.
3. ALL VALVES CONNECTED TO EXISTING MAINS ARE TO BE OPERATED BY AGENCY PERSONNEL ONLY.
4. U.S. MANUFACTURED IRON ONLY.
5. ALL STEEL FOR EXTENSION TO HAVE SHOP PRIME COAT ZINC CHROMATE, AND ONE HEAVY APPLICATION NO-OX-10 "A" IN ACCORDANCE WITH MANUFACTURE'S DIRECTION.
6. DEBRIS CAP PER MAG DETAIL 392.
7. VALVE BLOCKING REQUIRED PER QUAD CITY STANDARD DETAIL 301Q.

DEBRIS CAP COLOR TABLE
VALVE TYPE COLOR

IN-LINE-RW	BLACK
HYDRANT	BLUE
BUTTERFLY	YELLOW
ZONE	RED
FIRE LINE	WHITE
EFFLUENT	PURPLE
SEWER FORCE MAIN	GREEN

QUAD CITY STANDARD DETAIL

VALVE BOX

REVISED: 07/16
DETAIL No. 391Q

April Lawson

From: Robert Brand <robertb@abarricadecompany.com>
Sent: Wednesday, November 6, 2024 4:37 PM
To: April Lawson
Subject: RE: RFQ from COMBS CONSTRUCTION COMPANY, INC for 24-139A City of Prescott - Downtown Bollard - Location 1: Gurley & Cortez East

See prices below

Robert Brand
Account Manager
O: 623-271-7920
C: 623-455-0860
A Barricade Company LLC

From: April Lawson <april@combsaz.com>
Sent: Tuesday, November 5, 2024 8:33 AM
To: Robert Brand <robertb@abarricadecompany.com>
Subject: RFQ from COMBS CONSTRUCTION COMPANY, INC for 24-139A City of Prescott - Downtown Bollard - Location 1: Gurley & Cortez East

REQUEST FOR QUOTATION

Job: 24-139A City of Prescott - Downtown Bollard - Location 1 Gurley & Cortez East

TO:

Name:	Robert Brand
Company:	A Barricade Company LLC 1634 N. 19th Avenue Phoenix, AZ 85009 USA
Phone:	623-271-7920
Mobile Phone:	623-455-0860
Fax:	
Email:	robertb@abarricadecompany.com

FROM:

Name:	Mike Steg
Company:	Combs Construction Company, Inc. 1903 W Parkside Lane Suite 100 Phoenix, AZ 85027 USA
Phone:	602-237-4029
Mobile Phone:	602-920-9336
Fax:	602-237-4182
Email:	mike@combsaz.com

Job Information: 24-139A City of Prescott - Downtown Bollard - Location 1
Gurley & Cortez East

Owner:	CITY OF PRESCOTT
Job Type:	
Job Location:	Gurley & Cortez East
City:	Prescott
County:	
State / Province:	Arizona
Country:	United States
Bid Location:	
Bid Date:	
Bid Time:	

Request for Quote (RFQ) Information:

Publication Date: 11/5/2024 8:31 AM

Response Deadline Date: 11/7/2024 4:00 PM

Description: TRAFFIC CONTROL

RFQ Instructions: LINK TO PLANS AND SPECS

<https://app.box.com/s/ljnvk0n7qbtklhwfilecxmum2ed5fz1xc>

Buyer's Special Terms & Conditions: None Specified

Notes: None Specified

Note to Seller:

RESPONSE TO REQUEST FOR QUOTATION

Job: 24-139A City of Prescott - Downtown Bollard - Location 1 Gurley & Cortez East

SUBMITTED TO:

Name: Mike Steg
Company: Combs Construction Company, Inc.
1903 W Parkside Lane Suite 100
Phoenix, AZ 85027
USA
Phone: 602-237-4029

SUBMITTED BY:

Name: Robert Brand
Company: A Barricade Company LLC
1634 N. 19th Avenue
Phoenix, AZ 85009
USA
Phone: 623-271-7920

Mobile Phone: 602-920-9336
Fax: 602-237-4182
Email: mike@combsaz.com

Mobile Phone: 623-455-0860
Fax:
Email: robertb@abarricadecompany.com

Items:

Code	Description	Quantity	Unit of Measure	Unit Price	Total Price	Tax Rate	Grand Total	Will Split
109.10	Set Closure & Detour	1.00	EA	750.00	750.00	0	750.00	No
109.10	Tear Down Closure & Detour	1.00	EA	750.00	750.00	0	750.00	No
109.10	Equipment Rental	7.00	EA/DAY	350.00	2450.00	8.6	2660.70	No

Notes:

TCP \$70

Message boards?

Quoted Prices Submitted By: Robert Brand

Title: Sr Account Manager

Date: 11/6/2024

Time: 430pm

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

13531 E, AZ-89A, Prescott Valley, AZ 86314

GENERAL INFORMATION

Date	11/6/2024 7:33 PM		
Account:	COMBS CONSTRUCTION COMPANY	Account Manager:	Brian Dugan
Account number:	3084031	E-mail:	brianl.dugan@cemex.com
Contact:	APRIL LAWSON	Phone Number:	928-821-0961
E-mail:	APRIL@COMBSAZ.COM	Customer Service:	(928) 772-3833
Phone:	6022374029		
Project:	A: 24-139A CITY OF PRESCOTT GURLEY & COR	Quote Expiration:	12/6/2024
Project Address:	West Gurley Street & Cortez St. Prescott Arizona 86301	Price Valid	From 11/6/2024 To 12/7/2024

MATERIAL PRICING

Material Number	Description	Plant	Quantity	UoM	FOB Price	Freight	Delivered Price	Subtotal	Truck Type	Notes
1307799	SPEC BASE COARSE	1466 - Agg - Prescott	36.00	TON	\$19.50	\$14.50	\$34.00	\$1,224.00		
1306680	1" CON ROCK	1466 - Agg - Prescott	3.00	TON	\$27.00	\$14.50	\$41.50	\$124.50		
1302739	RECYCLED CONCRETE	1466 - Agg - Prescott	36.00	TON	\$15.50	\$14.50	\$30.00	\$1,080.00		
1317462	DELIVERY PER TON, UNDER 15	1466 - Agg - Prescott	1.00	PC	\$0.00	\$150.00	\$150.00	\$150.00		PER LOAD
					Total Delivered Price		\$2,578.50			

CLAUSES

Category	Item	Value	UoM	Comments
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Pricing Conditions

All Sales are subject to CEMEX Standard terms and conditions. Pricing quoted is per short ton and does not include sales tax. Applicable Sales Tax will apply unless Sales Tax exemption certificate is on file at CEMEX prior to pick up or delivery.
Delivered Pricing: Pricing is based on delivery during regular aggregate plant hours.
FOB Pricing: Material prices are FOB CEMEX facility at the designated location loaded onto buyer's trucks. Ownership of materials transfers from CEMEX to customer at gate.

Payment terms

Payment Terms are standard as follows: Net 10th Prox. (10th of the month following delivery or pick up)
Delayed portion of payment will attract a Finance charge of the lessor of 1.5% per month, 18% per annum or maximum permitted under applicable laws

Material Availability

All Materials are subject to availability by plant inventory, production schedules, shipping schedules, plant failure and / or equipment breakdown. CEMEX is not liable for lack of material, equipment, drivers, disruptions in transportation, and any other shortage.

Pit location

Fain Pit 13531 E Hwy 89A Prescott Valley

Delivery Availability

All shipments are subject to truck availability.

Product Performance

All material is per engineer approval and is considered acceptable when tested and sampled per acceptable sampling standards at our plant.

Seller reserves the right to (i) increase prices on any quotes or accepted orders without notice to reflect any raw material cost increases or surcharge incurred by Seller and (ii) defer or cancel any quotes or accepted orders in the event Seller becomes delayed or prevented from performing due to shortages or allocations of raw materials. In the event of a delay or cancellation resulting from shortages or allocations of raw materials, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or cancellation.

CEMEX Con Mat South, LLC

Quoted By:

Brian Dugan

COMBS CONSTRUCTION COMPANY

Accepted By:

APRIL LAWSON

Standard Terms and Condition

1. These Standard Terms and Conditions of CEMEX Con Mat South, LLC and its affiliates ("Seller"), Buyer's Credit Application, and Seller's Quotation, if any, (collectively, "Agreement") govern any and all purchases made by Buyer from Seller and are incorporated herein by reference. This Agreement, and any other documents prepared by Seller for Buyer in connection with Buyer's purchase of materials contain the entire understanding between the parties concerning the subject matter hereof, and there are no other agreements or understandings except as set forth herein. Any different or additional terms or conditions contained in any writing or instrument of Buyer, whether by purchase order or otherwise, are hereby objected to by Seller and shall have no effect on, and not become part of, this Agreement.
2. Technical Assistance. In no event shall Seller bear any responsibility for claims arising from technical advice or assistance provided to Buyer. Advice by Seller is for Buyer's guidance only and Buyer agrees to rely solely on its own architects, engineers or other technical experts.
3. Prices and Price Increases. Prices for the materials are (i) subject to material availability at the time of delivery; (ii) shall remain firm until the date set forth on the Seller's Quotation, if any, or if no such date is given, for a period of thirty (30) days after the date the order was accepted by Seller, the price was quoted by Seller or such shorter period as set forth in the Seller's quote; thereafter prices are subject to change by Seller; and (iii) do not include Saturday, Sunday holiday, off-hour or overtime shipments, all of which are subject to additional charges. Prices are applicable only to the job quoted or orders accepted by Seller and are available only to the specific Buyer referred to therein, are for a standard mix design, if applicable, and are only for the quantities requested by Buyer at the time the prices were quoted. Seller reserves the right to (i) increase prices on any quote or accepted orders without notice to reflect any raw material cost increases or surcharges incurred by Seller and (ii) defer or cancel any quote or accepted orders in the event Seller becomes delayed or prevented from performing due to shortages or allocation of raw materials. In the event of a delay or cancellation resulting from shortages or allocations of raw materials, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or cancellation.
4. Surcharges and Fees. Prices quoted may not include additional charges Buyer may be responsible for. Such additional charges include, but are not limited to, charges for additives, accelerators, winterizers/summerset, water (hot or chilled), ice and stand-by, waiting time and delivery charges due to loads in amounts less than a full truckload. Such prices shall be charged at the rate of Seller's then-current price list for additional charges, which is incorporated into these Terms and Conditions by reference as if fully set forth herein and which is available to Buyer upon request. Buyer acknowledges that surcharges and fees are to recoup Seller's costs and achieve a return on investment.
5. Tests. Seller reserves the right to levy an additional charge on Buyer for any nonstandard tests that Buyer may require to be performed on the materials sold to Buyer. Failure of Buyer to witness any tests shall be deemed a waiver by Buyer of its right to do so and of any right to require repetition of such tests, and Buyer shall be deemed to have accepted any such test results as sufficient to meet its specifications.
6. Payment and Interest. Buyer shall make all payments due hereunder in accordance with the terms of this Agreement and as stated on Seller's invoices or other notices of terms, without any right of setoff or retention and without regard to any agreement Buyer may have with other parties. If Buyer fails to pay in full the invoice amount when due, Buyer agrees to pay interest on the unpaid balance from the date when due until paid in full at the rate selected by Seller, not to exceed the lesser of 18% per annum or the highest lawful rate, specifically including post judgment. Buyer agrees to pay any and all costs and expenses incurred by Seller in collecting from Buyer any past due amounts, including but not limited to reasonable attorney fees, court costs and collection agency fees. Seller may suspend pending deliveries during any period when Buyer has overdue balances or evidence of a changed financial condition.
7. Liens. Buyer agrees to timely provide in writing to Seller information regarding bonding companies, general contractors or owners for the purpose of filing preliminary notices and claims on payment bonds or mechanic's and material supplier's liens.
8. Delivery. Seller's responsibility for delivery shall cease FOB shipping point or, if Seller agrees to deliver FOB delivery site, at the curbside or frontage of the address for delivery. Where delivery of products is to an unattended site, Seller will not be liable for any loss or damage to products, property or for unsigned delivery tickets. In absence of a specific delivery date on the Quotation, Seller will commence delivery of the materials on a date and at a rate mutually agreed upon by both Seller and Buyer.
9. Default. If Buyer is in default under this Agreement or any of its contracts or obligations with Seller, Seller may at its option and without notice: (i) declare the entire unpaid balance owed by Buyer due and payable; (ii) postpone further deliveries until such default is remedied; (iii) terminate any and all obligations under any contract; and (iv) refuse further performance without any liability to Buyer.
10. Limited Warranty and Liability Disclaimer. Seller warrants that the materials sold under this Agreement meet solely the description and specifications for the same set forth in the applicable Quotation, if any, and shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery thereof. No other express warranties are made with respect to said materials. Acceptance by Buyer of the materials shall constitute confirmation by Buyer that the materials meet the description and specifications, if any, set forth in such applicable Quotation. The foregoing warranty is subject to standard manufacturing and color variations, efflorescence, tolerances and classifications or naturally occurring substances. Seller is not responsible for installation or defective conditions caused by installation. Buyer's exclusive remedy for breach of this warranty shall be to require Seller, at Seller's option, to refund the purchase price for the materials failing to comply, to repair or to provide Buyer with conforming replacements for any nonconforming materials. Seller shall not be responsible for any removal or installation costs. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WRITTEN OR ORAL WARRANTIES OR CONTRACTUAL AGREEMENTS, WHETHER EXPRESS OR IMPLIED BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY. Buyer agrees that in specific consideration for receiving this warranty, it will indemnify and hold harmless Seller from any and all damages in connection with any statutory, contractual or warranty breach, negligence, strict liability, or other tortious conduct by Seller. This Agreement may not be modified or amended except by a writing signed by both parties.
11. Delays. If Seller is unable to complete delivery of any part of an order, Buyer shall accept such part of the order as Seller is able to deliver and Buyer shall pay for the part delivered pro rata at the same rate as the whole of the order agreed to be sold and on the same terms of payment. In the event Seller shall be delayed in or prevented from the performance of any act required under this Agreement, or it shall become commercially unreasonable to perform by reason of governmental allocations, priorities, restrictions or regulations now or hereafter in effect, storm, flood, fire, earthquake or other Acts of God, war, terrorism, riot, insurrection or other civil disturbance, strikes, lockouts, shortages of materials, labor, raw materials, fuel, power or production facilities, breakdown of equipment, transportation shortages, changes in market conditions or other contingencies beyond Seller's reasonable control whether of a similar or dissimilar nature to the foregoing, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or failure.
12. Claims. Buyer agrees that all claims against Seller are waived unless presented to Seller in writing within one week from the date of delivery of the materials. Seller shall have thirty days from receipt to inspect and correct a defect if such claim is allowed. Buyer further agrees that in the event that Buyer disagrees with Seller's decision about whether to allow the claim that the Buyer's remedy is to formally adjudicate the claim, but the Buyer further agrees that Seller's invoices for all materials supplied shall be paid in the interim. No claim shall be allowed after the materials purchased hereunder are incorporated, modified or processed by Buyer in any manner. SELLER'S LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE SHALL NOT EXCEED THE PRICE OF THE MATERIALS ACTUALLY RECEIVED FROM BUYER BY SELLER WITH REGARD TO WHICH SUCH CLAIM FOR LOSS OR DAMAGE IS MADE.
13. Waiver. Seller may, at its option, permit Buyer to remedy any default under this Agreement without waiving the default so remedied or any other default by Buyer. Buyer waives notice of default of this Agreement and waives presentment, demand, protest, and notice of dishonor as to any instrument issued or delivered to Seller.
14. Venue. This Agreement will be governed by the applicable state and federal laws without giving effect to conflict of laws principles. The Buyer agrees that any legal actions and proceedings brought for the breach or the enforcement of this Agreement will lie in the state and county in this state of delivery. Buyer consents and submits to the jurisdiction and venue of any state, county or federal court located within that county. As a material inducement to Seller to enter into this Agreement, Buyer waives the right to trial by jury in any proceeding arising out of or related to this Agreement.
15. Notice. Any notice sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the 10100 Katy Freeway, Suite 300, Houston, TX 77043, Attn: CEMEX Customer Care.
16. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Party.
17. Offset and/or Setoff. Seller may exercise the right of set-off under this Agreement as to any sums owed by Buyer and/or its affiliates under any other contract or agreement with Seller and/or its affiliates.
18. Remedies Cumulative. The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement are to be in addition to, and not a limitation of rights and remedies at law or in equity.
19. Miscellaneous. Time is of the essence. Buyer consents to Seller sending information to Buyer regarding Seller's products and prices at any time by fax to any fax number provided by Buyer, other electronic means or otherwise. A facsimile copy or electronic transmission will be treated as an original. Buyer shall not assign the Agreement or any interest herein without the prior written consent of Seller, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent.
20. Authorization for Credit Review. Buyer consents to Seller's use of a non-business consumer credit report on the Buyer in order to further evaluate the credit worthiness of the Buyer in connection with the extension of business credit as contemplated hereby. Buyer authorizes Seller to utilize a consumer credit report from time to time in connection with the extension or continuation of business credit. Buyer hereby knowingly consents to the use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 USC @ 1681 et seq.
21. Representations. Buyer represents to Seller that it is solvent and that any financial information provided reflects the present financial condition of the Buyer. If Buyer is not a corporation or limited liability entity, Buyer acknowledges that Seller is relying on the credit worthiness and financial ability of the owner(s) of Buyer. Each owner shall be joint and severally liable for all indebtedness of Buyer to Seller under the Agreement. Buyer warrants that all information supplied to Seller is accurate and complete. Each representation and the information contained in a Credit Application, if any, is material and given to induce Seller to provide credit. Buyer will notify Seller by certified mail, within forty-eight (48) hours after any material change in Buyer's financial or ownership status.



Innovative Solutions to Build a Better Future

Cemex is evolving. We have updated our brand as part of our evolution towards becoming a more agile, innovative, and sustainable company. We are committed to helping our customers push the boundaries of sustainable construction through innovative solutions, with the clear goal of building a better future. **Scan the QR code to watch our rebrand announcement video and learn more.**



Vertua® is a family of sustainable products that enables building a better future. Vertua® promotes sustainable construction solutions through measureable environmental attributes. Learn more about Vertua®, including Vertua® concrete and Vertua® cement lower-carbon options:

buildwithvertua.com



Cemex Go is a first-of-its-kind fully digital customer integration platform allowing you to have more control over your business than ever before. Place, manage, and track your orders in real-time. Plus, you can view invoices and make payments all within the digital platform. Try Cemex Go today:

cemexusa.com/go



Strong, sustainable, and durable, Portland Limestone Cement allows you to enjoy similar benefits to Ordinary Portland Cement (OPC) while lowering your carbon footprint. It can be used for the same applications as OPC, including concrete, precast, block, pavers projects, and many others.

Learn more:

cemexusa.com/PLC



GENERAL INFORMATION

Date	11/8/2024 2:38 PM	Account Manager:	Travis Gilbert Mosher
Account:	COMBS CONSTRUCTION COMPANY	E-mail:	travisgilbert.mosher@cemex.com
Account number:	3084031	Phone Number:	0
Contact:	TERX SURKALA	Customer Service:	928-443-9207
E-mail:	terx@combsaz.com	Quote Expiration:	12/8/2024
Phone:	6026943311	Price Valid	From 11/8/2024 To 12/8/2024
Project:	DOWNTOWN BOLLARD PRESCOTT		
Project Address:	141 South Cortez Street Prescott Arizona 86303		

MATERIAL PRICING

Material Number	Description	Quantity	UoM	Price Per Unit	Notes
1506658	ADOT CLS 4500psi #57 AIR ASH	1.00	YD3	\$198.00	
1231310	ADOT CLS 4500psi #57 AIR ASH FLOW	1.00	YD3	\$202.00	

CLAUSES

Category	Item	Value	UoM	Comments
Pricing Escalation	Prices are subject to an escalation every 6 months of	\$12.00	USD/Cu Yd	Effective March 1, 2025
Surcharges and Fees	Environmental compliance fee	\$25.00	USD/Load	
	Variable Fuel surcharge	\$23.00	USD/Load	At present, subject to change
	Waiting Time fee	\$2.00 / \$120.00	USD/min or USD/Hour	Unload Time of 6 min per cubic yard is included in the price. Once that time has expired, the Waiting Time fee will apply to all loads
	Short Load Fee	Per Schedule		Applies to loads 6 yards or less
	4 < 6 cu/ yds	\$125.00	USD/Load	
	2 < 4 cu/ yds	\$150.00	USD/Load	
	1 < 2 cu/ yds	\$175.00	USD/Load	
	Saturday premium charge - Ready Mix	\$10.00	USD/Cu Yd	
	Bucket Washout fee (Chute rinse recovery system)	\$25.00	USD/Load	This service must be requested at the time of placing an order
	Color Washout fee	\$25.00	USD/Load	Applies to all loads with colored concrete
	Truck Rental Fee	\$175.00	USD/Hour	1. When using the truck for unscheduled multiple stops. 2. When using the truck to mix material that does not belong to Cemex. 3. Requesting a truck from the hours of 6:00 pm – 4:00 am and having the driver check in and then not being utilized.
Additional Products and Services	Plant Opening Fee	\$2,500.00	USD per Each	Between the hours of 6:00 pm – 3:00 am Monday – Friday. Anytime on Saturday. If the plant has 100+ yards scheduled for Saturday, the opening fee will be waived. Closed on Sundays.
	Accelerator - Winter Set - 1	\$8.00	USD/Cu Yd	
	Accelerator - Winter Set - 1	\$8.00	USD/Cu Yd	
	Accelerator - Winter Set - 3	\$18.00	USD/Cu Yd	
	Accelerator - Winter Set - 4	\$23.00	USD/Cu Yd	
	Retarder - Summer Set - 1	\$4.00	USD/Cu Yd	
	Retarder - Summer Set - 2	\$5.00	USD/Cu Yd	
	Retarder - Summer Set - 3	\$6.00	USD/Cu Yd	
	Retarder - Summer Set - 4	\$7.00	USD/Cu Yd	
	Chilled water	\$3.00	USD/Cu Yd	
	Hot water	\$3.00	USD/Cu Yd	

Pricing Conditions

All Sales are subject to CEMEX Standard terms and conditions which shall control and take precedence over any terms and conditions to the contrary in any purchase order or other document. Customer is responsible for Applicable Sales Tax. Such taxes will appear on invoice unless Sales Tax exemption certificate is on file at CEMEX prior to shipping. If plans or specifications were not available for review at the time of this quote, all specification mixes will require further pricing review. Prices quoted are subject to availability of materials and subject to change prior to commitment. There will be a fuel surcharge on all delivered loads. The charge will be on a sliding scales adjusted monthly based on fuel price according to WEST COAST PADD 5 (Diesel)

Payment terms

Payment Terms are standard as follows: Net 10th Prox. (10th of the month following delivery)
Delayed portion of payment will attract a Finance charge of the lessor of 1.5% per month, 18% per annum or maximum permitted under applicable laws

CEMEX Con Mat South,LLC
Quoted By:
Travis Gilbert Mosher

COMBS CONSTRUCTION COMPANY
Accepted By:
TERX SURKALA

Standard Terms and Condition

1. These Standard Terms and Conditions of CEMEX Con Mat South, LLC and its affiliates ("Seller"), Buyer's Credit Application, and Seller's Quotation, if any, (collectively, "Agreement") govern any and all purchases made by Buyer from Seller and are incorporated herein by reference. This Agreement, and any other documents prepared by Seller for Buyer in connection with Buyer's purchase of materials contain the entire understanding between the parties concerning the subject matter hereof, and there are no other agreements or understandings except as set forth herein. Any different or additional terms or conditions contained in any writing or instrument of Buyer, whether by purchase order or otherwise, are hereby objected to by Seller and shall have no effect on, and not become part of, this Agreement.
2. Technical Assistance. In no event shall Seller bear any responsibility for claims arising from technical advice or assistance provided to Buyer. Advice by Seller is for Buyer's guidance only and Buyer agrees to rely solely on its own architects, engineers or other technical experts.
3. Prices and Price Increases. Prices for the materials are (i) subject to material availability at the time of delivery; (ii) shall remain firm until the date set forth on the Seller's Quotation, if any, or if no such date is given, for a period of thirty (30) days after the date the order was accepted by Seller, the price was quoted by Seller or such shorter period as set forth in the Seller's quote; thereafter prices are subject to change by Seller; and (iii) do not include Saturday, Sunday holiday, off-hour or overtime shipments, all of which are subject to additional charges. Prices are applicable only to the job quoted or orders accepted by Seller and are available only to the specific Buyer referred to therein, are for a standard mix design, if applicable, and are only for the quantities requested by Buyer at the time the prices were quoted. Seller reserves the right to (i) increase prices on any quote or accepted orders without notice to reflect any raw material cost increases or surcharges incurred by Seller and (ii) defer or cancel any quote or accepted orders in the event Seller becomes delayed or prevented from performing due to shortages or allocation of raw materials. In the event of a delay or cancellation resulting from shortages or allocations of raw materials, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or cancellation.
4. Surcharges and Fees. Prices quoted may not include additional charges Buyer may be responsible for. Such additional charges include, but are not limited to, charges for additives, accelerators, winterizers/summerset, water (hot or chilled), ice and stand-by, waiting time and delivery charges due to loads in amounts less than a full truckload. Such prices shall be charged at the rate of Seller's then-current price list for additional charges, which is incorporated into these Terms and Conditions by reference as if fully set forth herein and which is available to Buyer upon request. Buyer acknowledges that surcharges and fees are to recoup Seller's costs and achieve a return on investment.
5. Tests. Seller reserves the right to levy an additional charge on Buyer for any nonstandard tests that Buyer may require to be performed on the materials sold to Buyer. Failure of Buyer to witness any tests shall be deemed a waiver by Buyer of its right to do so and of any right to require repetition of such tests, and Buyer shall be deemed to have accepted any such test results as sufficient to meet its specifications.
6. Payment and Interest. Buyer shall make all payments due hereunder in accordance with the terms of this Agreement and as stated on Seller's invoices or other notices of terms, without any right of setoff or retention and without regard to any agreement Buyer may have with other parties. If Buyer fails to pay in full the invoice amount when due, Buyer agrees to pay interest on the unpaid balance from the date when due until paid in full at the rate selected by Seller, not to exceed the lesser of 18% per annum or the highest lawful rate, specifically including post judgment. Buyer agrees to pay any and all costs and expenses incurred by Seller in collecting from Buyer any past due amounts, including but not limited to reasonable attorney fees, court costs and collection agency fees. Seller may suspend pending deliveries during any period when Buyer has overdue balances or evidence of a changed financial condition.
7. Liens. Buyer agrees to timely provide in writing to Seller information regarding bonding companies, general contractors or owners for the purpose of filing preliminary notices and claims on payment bonds or mechanic's and material supplier's liens.
8. Delivery. Seller's responsibility for delivery shall cease FOB shipping point or, if Seller agrees to deliver FOB delivery site, at the curbside or frontage of the address for delivery. Where delivery of products is to an unattended site, Seller will not be liable for any loss or damage to products, property or for unsigned delivery tickets. In absence of a specific delivery date on the Quotation, Seller will commence delivery of the materials on a date and at a rate mutually agreed upon by both Seller and Buyer.
9. Default. If Buyer is in default under this Agreement or any of its contracts or obligations with Seller, Seller may at its option and without notice: (i) declare the entire unpaid balance owed by Buyer due and payable; (ii) postpone further deliveries until such default is remedied; (iii) terminate any and all obligations under any contract; and (iv) refuse further performance without any liability to Buyer.
10. Limited Warranty and Liability Disclaimer. Seller warrants that the materials sold under this Agreement meet solely the description and specifications for the same set forth in the applicable Quotation, if any, and shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery thereof. No other express warranties are made with respect to said materials. Acceptance by Buyer of the materials shall constitute confirmation by Buyer that the materials meet the description and specifications, if any, set forth in such applicable Quotation. The foregoing warranty is subject to standard manufacturing and color variations, efflorescence, tolerances and classifications or naturally occurring substances. Seller is not responsible for installation or defective conditions caused by installation. Buyer's exclusive remedy for breach of this warranty shall be to require Seller, at Seller's option, to refund the purchase price for the materials failing to comply, to repair or to provide Buyer with conforming replacements for any nonconforming materials. Seller shall not be responsible for any removal or installation costs. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WRITTEN OR ORAL WARRANTIES OR CONTRACTUAL AGREEMENTS, WHETHER EXPRESS OR IMPLIED BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY. Buyer agrees that in specific consideration for receiving this warranty, it will indemnify and hold harmless Seller from any and all damages in connection with any statutory, contractual or warranty breach, negligence, strict liability, or other tortious conduct by Seller. This Agreement may not be modified or amended except by a writing signed by both parties.
11. Delays. If Seller is unable to complete delivery of any part of an order, Buyer shall accept such part of the order as Seller is able to deliver and Buyer shall pay for the part delivered pro rata at the same rate as the whole of the order agreed to be sold and on the same terms of payment. In the event Seller shall be delayed in or prevented from the performance of any act required under this Agreement, or it shall become commercially unreasonable to perform by reason of governmental allocations, priorities, restrictions or regulations now or hereafter in effect, storm, flood, fire, earthquake or other Acts of God, war, terrorism, riot, insurrection or other civil disturbance, strikes, lockouts, shortages of materials, labor, raw materials, fuel, power or production facilities, breakdown of equipment, transportation shortages, changes in market conditions or other contingencies beyond Seller's reasonable control whether of a similar or dissimilar nature to the foregoing, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or failure.
12. Claims. Buyer agrees that all claims against Seller are waived unless presented to Seller in writing within one week from the date of delivery of the materials. Seller shall have thirty days from receipt to inspect and correct a defect if such claim is allowed. Buyer further agrees that in the event that Buyer disagrees with Seller's decision about whether to allow the claim that the Buyer's remedy is to formally adjudicate the claim, but the Buyer further agrees that Seller's invoices for all materials supplied shall be paid in the interim. No claim shall be allowed after the materials purchased hereunder are incorporated, modified or processed by Buyer in any manner. SELLER'S LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE SHALL NOT EXCEED THE PRICE OF THE MATERIALS ACTUALLY RECEIVED FROM BUYER BY SELLER WITH REGARD TO WHICH SUCH CLAIM FOR LOSS OR DAMAGE IS MADE.
13. Waiver. Seller may, at its option, permit Buyer to remedy any default under this Agreement without waiving the default so remedied or any other default by Buyer. Buyer waives notice of default of this Agreement and waives presentment, demand, protest, and notice of dishonor as to any instrument issued or delivered to Seller.
14. Venue. This Agreement will be governed by the applicable state and federal laws without giving effect to conflict of laws principles. The Buyer agrees that any legal actions and proceedings brought for the breach or the enforcement of this Agreement will lie in the state and county in this state of delivery. Buyer consents and submits to the jurisdiction and venue of any state, county or federal court located within that county. As a material inducement to Seller to enter into this Agreement, Buyer waives the right to trial by jury in any proceeding arising out of or related to this Agreement.
15. Notice. Any notice sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the 10100 Katy Freeway, Suite 300, Houston, TX 77043, Attn: CEMEX Customer Care.
16. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Party.
17. Offset and/or Setoff. Seller may exercise the right of set-off under this Agreement as to any sums owed by Buyer and/or its affiliates under any other contract or agreement with Seller and/or its affiliates.
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PROJECT NAME COP DOWNTOWN BOLLARDS		JOB / P. O. NUMBER /		QUOTE DATE 11/5/2024 4:16:43 PM	
PROJECT LOCATION LOCATION 1 GURLEY ST PRESCOTT, AZ 86301				BID DATE November 7, 2024	
CUSTOMER COMBS CONSTRUCTION COMPANY INC CONTACT MIKE STEG 602-237-4029 STREET ADDRESS PO BOX 10789 CITY, STATE, ZIP GLENDALE, AZ 85318 CUSTOMER NO. 991945				PROJECT START DATE	
				QUOTE EXPIRATION DATE November 5, 2024	
				See Price Escalators	
PRODUCT CODE	MATERIAL DESCRIPTION	UOM	USAGE	QTY	PRICE
245311A	4500PSI -F, 1" MAG AA	CY	BOLLARDS	4	\$173.00
245311D	4500PSI-F, 1" MAG AA FLOWABLE	CY	BOLLARDS	13	\$177.00
ADDITIONAL COMMENTS				PRICES DO NOT INCLUDE TAX	
ESCALATION NOTES:					

Add:

\$25.00 Per Load Transportation Surcharge - Add to Above Pricing
\$2.00 Per Cubic Yard Environmental Fee - Add to Above Pricing
\$2.00 Per Cubic Yard Tempered Water Service Fee
\$10.00 Per Cubic Yard Saturday Premium Charge

Add Miscellaneous Extra Charges:

\$8.00 Per Cubic Yard per each 1% Non Chloride Accelerator (available in 0.25% increments)
\$4.00 Per Cubic Yard per Each 30 Minute Increment of Hydration Stabilizer (Retarder)
\$7.50 Per Cubic Yard Mono/Micro Fiber (1LB per Cubic Yard)
\$5.00 Per Pound of Color per Sack of Cement per Cubic Yard
\$50.00 Color Washout Fee per Load
\$250.00 Per Load Short Load Delivery Fee (Orders of 4 CYs or Less)
\$2.08 Per Minute of Wait Time per Load After 45 Minutes (on job standby)
\$0.75 Per Pound Ice
\$8.00 Per Cubic Yard Cancellation Fee within 24 Hours of Scheduled Start Time (\$200 minimum fee)
\$125.00 Per Load Multi-Stop Delivery Fee (per stop)

*Above pricing is valid for 30 days from quote date, written quote acceptance is required to hold pricing beyond 30 days.
Prices are FOB job site unless noted otherwise and do not include taxes. Sales Tax owed unless exempt documentation is received before the first pour.
See item 7. TERMS: NET 30 DAYS. If not paid when due, Applicant agrees to pay interest charges at the rate of 1.5% per month or the maximum lawful rate, whichever is lower,
and Seller's reasonable costs of collection, including reasonable attorneys' fees.*

Signature: _____ Quote Date: 11/5/2024 Accepted by: _____
Please Note

All concrete as bid is per 90 minute max delivery and 95 degree max concrete temperature unless noted otherwise. All Concrete as Bid contains Type F Ash and normal weight aggregate unless specifically noted. All concrete pricing above is valid from Monday thru Friday during normal business hours unless noted otherwise. Aggregates are a naturally occurring material which can contain particles that degrade or stain concrete. It is not possible to completely remove all such particles; however, the occurrence is infrequent, and the bulk aggregate meets the Limits for Deleterious Substances and Physical Property Requirements of Coarse Aggregate for Concrete as outlined in ASTM C 33. Martin Marietta does not warranty against these infrequent occurrences.

Minimum amount of standard concrete for deliveries is 2 cubic yards, specialty concrete is 4 cubic yards. Buyer is responsible for safe access to work area and wash out containment area for all deliveries.



1. Seller's quotation and offer contained herein shall be deemed withdrawn and of no further effect unless accepted by Purchaser by signing and returning a copy hereof to Seller within thirty (30) days after the date hereof. Acceptance of any order from Purchaser ("Order") is expressly made conditional on assent to these Terms and Conditions, either by written acknowledgment or by Purchaser's acceptance of the products sold hereunder. These Terms and Conditions also serve as Seller's objection to and rejection of any terms and conditions included in Purchaser's forms that are different from or additional to these Terms and Conditions.

2. Seller's obligation to deliver concrete at prices quoted is limited to deliveries on the project specified within six (6) months after date of quotation, unless otherwise specified on the front side thereof. Seller may refuse to commence or continue deliveries at prices quoted on projects not started within a reasonable time or on projects not continuously prosecuted after the commencement of deliveries.

3. All concrete ordered by Purchaser and delivered to the job, whether used or not, will be billed to Purchaser. Prices and quantities are based upon the wet volume at the time of discharge from delivery trucks. Receipt and delivery tickets shall be binding unless immediately disputed. The Purchaser is required to provide an area suitable for wash down of the truck to meet applicable local, state, and national environmental requirements.

4. Unless otherwise specified, prices quoted are based on delivery by trucks to jobsite during normal working hours, Monday through Friday. An additional charge may be made for deliveries after normal working hours. Purchaser is responsible for giving Seller reasonable and adequate notice for scheduling and delivering concrete. Seller will not be expected to hold trucks and equipment available for deliveries to Purchaser, and will not, without reimbursement, hold plants open and equipment available for pours for which adequate and reasonable notice has not been given. Seller will not honor back charges for delays in delivery due to inadequate notice by Purchaser or due to underestimation of quantities for a pour.

5. Deliveries by trucks are dependent upon accessibility to point of delivery. Roadways shall be deemed inaccessible if trucks cannot proceed with the full load (unless part loads are specifically ordered and agreed to by Seller) under its own power without damage to property or equipment. In the event Purchaser ordered delivery beyond curb line, Seller shall not be liable for damage to sidewalks, driveways, or other property, and Purchaser shall indemnify and hold Seller harmless against any and all liability, loss and expense, incurred as a result of such damages. All deliveries shall be made subject to applicable regulations governing the standard operating procedure of common carriers.

6. Prices quoted are based on prompt unloading of trucks. Seller reserves the right to make a standby charge as listed on the front page hereof. In case of repeated delays in unloading, Seller reserves the right to discontinue deliveries until conditions causing delay are corrected.

7. Any sales, processing or similar tax imposed by any governmental authority which is now or hereafter becomes applicable to deliveries by Seller shall be paid by Purchaser unless otherwise provided by law in addition to the prices specified herein. Concrete pricing as quoted excludes sales tax. The applicable sales tax rate will be charged to Purchaser. If the project is tax exempt, the tax-exempt certificate must be received by Seller prior to the first shipment to the project. If not received, purchaser is responsible for the sales tax payment.

8. Seller warrants that all cementitious materials, aggregates and admixtures used by it in furnishing concrete pursuant to this quotation shall conform to current ASTM specifications for cementitious materials, aggregates and admixtures of the type specified and that all ready-mixed concrete delivered to Purchaser shall conform to applicable requirements of current ASTM Standard C 94. Where quantity of cementitious materials is specified, Seller warrants that the concrete delivered will contain the specified quantity of cementitious materials of the type specified within industry accepted tolerances for ready-mixed concrete. Where strength of concrete is specified and concrete is delivered by Seller, Seller warrants that the concrete furnished will meet or exceed the indicated design strength at the designated age when tested in accordance with the applicable and current ASTM Standards C 31, C 39, C 78, C 172, C 293, applicable provisions of C 94, and evaluated in accordance with applicable provisions of the ACI 318 Building Code. The addition of water to the mix by Purchaser relieves Seller of any responsibility as to strength of concrete provided the slump at time of delivery is equal to or greater than that specified. Where strength of concrete is designed in excess of 4500 psi or a "High Early" concrete is required, the minimum batch size shall be 4.0 cubic yards, for which Purchaser is required to pay. SELLER MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR OF FUTURE PERFORMANCE OR OF ANY OTHER KIND. Seller's obligation under this warranty shall be limited to replacement or allowance of credit for nonconforming materials as provided herein.

9. Seller shall have no liability whatsoever to Purchaser or to any other person for delays in deliveries of orders accepted hereunder resulting from fire, casualties, calamities, strikes or other labor disputes, mechanical failures, war, insurrection, interruption or shortage of utility service or materials, acts or regulations of any governmental body or agency, or resulting from conditions or events beyond the reasonable control of Seller. Should Seller experience any delays or shortages of transportation or materials, Seller shall be permitted to allocate deliveries among its customers, but Seller shall use commercially reasonable efforts to meet any delivery schedule to which it has agreed hereunder.

10. Seller shall not be liable for loss or damage of any nature after delivery. Seller's only liability and obligation with respect to nonconforming (including defective) concrete shall be to replace such nonconforming concrete at point of delivery, or at Seller's option, to allow credit for such nonconforming concrete, provided that Purchaser shall be deemed to have waived all rights or claims hereunder with respect to nonconforming concrete not reported to Seller within one (1) year after the time of delivery thereof to Purchaser. Seller shall have no liability for loss or damage in excess of the price received for nonconforming or defective concrete delivered to Purchaser or for losses or damages of any nature (INCLUDING WITHOUT LIMITATION INCIDENTAL OR CONSEQUENTIAL DAMAGES) incurred or suffered by Purchaser or any other person or entity in repairing or replacing defective concrete or occasioned by defective concrete, and Seller shall have no other responsibility, obligation or liability whatsoever with respect to any concrete delivered hereunder whether predicated or alleged breach of contract or negligence or otherwise.

11. Shipments are subject to prior credit approval. If credit is approved, all payments must be made in accordance with the then applicable credit policies of Seller, and if not so made, the agreement that is contemplated herein may be terminated by Seller immediately. Terms of payment are net 30 days following date of invoice. If Purchaser fails to make timely payments or if, in Seller's opinion, the financial condition of Purchaser or other grounds for insecurity warrant such action, Seller may, without limiting its other remedies, (i) suspend shipments pending receipt of assurances or credit support satisfactory to Seller or (ii) terminate the Order, in which event unpaid invoices shall become immediately due and payable. Any past due account shall bear interest at the rate of 18% per annum. In the event the collection of any unpaid balance is placed in the hands of Seller's attorney, Purchaser shall pay a reasonable attorney's fee.

12. This quotation is made subject to all applicable governmental orders, rules and regulations and with respect to construction or the use of building materials. The parties agree that the laws of Arizona shall govern this Agreement and any disputes shall be heard in the courts of Maricopa County, Arizona. It is understood that there are no verbal agreements or understandings which are not incorporated herein.

NON-COMPLIANCE

Martin Marietta will not be responsible for failing concrete results derived from tests not adhering to the latest version of the pertinent ACI, ASTM or AASHTO code, standard or specification. This includes, but is not limited to, sampling, casting and initial curing of concrete cylinders, concrete cylinder transportation and final curing as well as reporting that does not meet the prescribed requirements. In the event that non-compliant test results are reported to customer it shall notify Martin Marietta within three days of such occurrence to allow time for investigation and response. In order for non-compliant results to be considered by Martin Marietta, documentation of the following items meeting the related code, standard or specification must be provided: (i) Evidence the concrete has been sampled and tested by a technician holding a current ACI Field 1 Certification; (ii) Evidence that the concrete was sampled at the point of discharge of the concrete truck as stated in ASTM C172 & ACI 318-19; (iii) Evidence that the concrete was tested in accordance with ASTM C39 and C231; and (iv) Evidence that the concrete strength specimens were made, cured and transported in accordance with ASTM C31. In the event of a non-compliant test result where it is determined that the above referenced procedures were not followed and the in-place concrete is found to be in compliance with agreed upon standards, all costs related to the investigation, including but not limited to, independent third-party testing, Martin Marietta management consultation fees, and all legal fees will be the responsibility of the customer.

Job Information Sheet



Please return completed job information sheet along with signed quote
** Martin Marietta will not supply concrete to this project without completed form **

To: COP DOWNTOWN BOLLARDS
Attention:
Customer #: 991945
Phone:
E-Mail:

Date: 11/5/2024 4:16:43 PM
Project:
Project Address: LOCATION 1 GURLEY ST LOCATION 2
CORTEZ ST
PRESCOTT, AZ 86301

Please Complete All Sections Listed Below

Job Number/PO#:
Project Type (Please Select): Private { } Public { } State/Local { } Federal { } Residential { } Bond Job { }
Start Date:
Estimated Project Valuation (\$):
Owner Name:
Owner Address:
Lender Co:
Lender Co Address:
Loan #
Bonding Co:
Bonding Co Address:
Bond #
General/Direct Contractor:
General/Direct Contractor Address:
General/Direct Contractor Phone:
Is this project located on tribal community land (Please Select)? Yes { } No { }
If so, please provide which community:

I hereby certify that the information provided in this form is complete, true
and correct to the best of my knowledge.

Martin Marietta

By: _____
Title: _____
Date: _____

By: _____
Date: _____
Expiration Date: November 5, 2024

Table 1 - Breakdown of Estimated Fee**Field Services**

Field Technician Earthwork & Asphalt	6	hours	@	\$	59.00	/hour	\$	354.00
Field Technician Concrete	2	hours	@	\$	59.00	/hour	\$	118.00
							\$	472.00

Laboratory Testing

Marshall Unit Weight	1	tests	@	\$	125.00	/test	\$	125.00
Maximum Theoretical Unit Weight	1	tests	@	\$	120.00	/test	\$	120.00
Asphalt Extraction/Gradation	1	tests	@	\$	250.00	/test	\$	250.00
Concrete Compression Tests	5	tests	@	\$	25.00	/test	\$	125.00
Subtotal							\$	620.00

Subtotal \$ 620.00**Reimbursables**

Field Vehicle	8	hours	@	\$	15.00	/hour	\$	120.00
Equipment	8	hours	@	\$	15.00	/hour	\$	120.00
Subtotal							\$	240.00

Project Management, Data Processing, Reimbursables

Project Engineer	1	hours	@	\$	110.00	/hour	\$	110.00
Data Processor	1	hours	@	\$	45.00	/hour	\$	45.00
Subtotal							\$	155.00

TOTAL ESTIMATED FEE \$ 1,487.00



Quality Testing, LLC
175 S Hamilton Place, Bldg 6, #114
Gilbert, AZ 85233
(480) 496-2000 • (480) 496-2001
www.qt-corp.com

SUBCONSULTANT: QT

PROJECT NAME: City of Prescott - Downtown Bollard - Individual Locations

PROJECT OWNER: City of Prescott

ESTIMATE NUMBER: 1-1

Scope of Work: The following durations were provided by Combs Construction at time of this quote.

Concrete Sampling and Testing (1 day @ 4 hrs./day)
Concrete Compressive Strength Cylinder Retrieval (1 day @ 2 hrs./day)
Soils Sampling / Density Testing (SG/AB) (1day @ 4hrs/day)
Asphalt Density Testing (1 Day @ 4hrs/day)

Note: All anticipated materials lab testing has been included in this estimate.

Estimate Amount Defined Scope: For the proposed amount, QT will perform construction materials sampling and testing, both field and lab, that is specifically defined in the scope of work provided above.

Cost Estimate Summary:

Total Extended QT Direct Billable Labor	\$	1,487.00
(Includes QC Supervisor, QT Reporting Tech, Field Tech, Etc.)		
Total Laboratory Testing Fees	\$	192.00
(Includes All Laboratory Testing)		
Total Other Direct Costs	\$	280.00
(Includes Vehicle, Subcontracted Services, etc., if Applicable)		
Total of all Fees	\$	1,959.00

The following pages identify the time frame, resourcing, and other assumptions used in developing this cost estimate. Assumptions are based on the information provided by your office, and QT's experience on similar projects, at the time of this proposal. If there are changes to the contractor's schedule, re-testing, additional site visits or other items that are not part of the originally assumed visits, these visits will be outside this scope of work. Items outside this scope of work will be extra work that will be billed to the contractor based on the units and rates established here within.

William O'Neill

Estimator

11/7/2024

Date

Signature



PROPOSAL SUMMARY

PROJECT NAME : City of Prescott - Downtown Bollard - Individual Locations

SCOPE OF SERVICES: Contractor Quality Control

LABOR FEES

CLASSIFICATION	LABOR TYPE	REG HOURS	REGULAR RATE	ASS'D % OT	OVERTIME HOURS	OVERTIME RATE ⁽¹⁾	EXTENDED LABOR COST
Field Technician	Direct	14	\$ 78.00			\$ 78.00	\$ 1,092.00
Project Supervisor	Direct	2	\$ 165.00			\$ 165.00	\$ 330.00
Office Admin	Direct	1	\$ 65.00			\$ 65.00	\$ 65.00
(1) Regular Rate X Overtime Premium of 1.5							
SUBTOTAL DIRECT LABOR							\$ 1,487.00

VEHICLE AND PER-DIEM CHARGES

DESCRIPTION	NO. UNITS	UNITS	UNIT PRICE	EXTENDED VEHICLE AND PER-DIEM
Vehicle Trip Charge	4	EA	\$ 70.00	\$ 280.00
SUBTOTAL VEHICLE AND PER-DIEM CHARGES				\$ 280.00

OTHER PROJECT DIRECT CHARGES

DESCRIPTION	NO. UNITS	UNITS	UNIT PRICE	EXTENDED OTHER PROJECT CHARGES
			\$ -	\$ -
SUBTOTAL OTHER PROJECT DIRECT CHARGES				\$ -

LAB TESTING FEES

DESCRIPTION	# of UNITS	UNITS	UNIT PRICE	EXTENDED LABORATORY FEES
Compressive Strength - Cylinder	4	EA	\$ 18.00	\$ 72.00
Compressive Strength - Prism		EA	\$ 22.00	\$ -
Aggrgate Specific Gravity		EA	\$ 65.00	\$ -
Atterberg Limits		EA	\$ 85.00	\$ -
Proctor - Std. Method	1	EA	\$ 120.00	\$ 120.00
Sieve Analysis		EA	\$ 75.00	\$ -
Nuclear Oil Content Gauge Calibration		EA	\$ 650.00	\$ -
AC Content w/Gradation		EA	\$ 200.00	\$ -
Marshall Bulk Density		EA	\$ 150.00	\$ -
Gyratory Bulk Density		EA	\$ 190.00	\$ -
Maximum Specific Gravity (Rice)		EA	\$ 155.00	\$ -
AC Core Density		EA	\$ 25.00	\$ -
Drilling AC Cores		EA	\$ 30.00	\$ -
Swell Test		EA	\$ 150.00	\$ -
TOTAL LABORATORY TESTING FEES				\$ 192.00

TOTAL ESTIMATE OF ALL FEES

\$ 1,959.00

William O'Neill
Estimator

November 7, 2024
Date

QUOTATION



Date: 11/05/2024
Quote #: 1320374344
Account: 214311

ACCOUNT : COMBS CONSTRUCTION CO INC QUOTE NAME : 24-139A CITY OF PRESCOTT - DOWNTOWN BOLLARD - LOCATION 1

Bill-To Address: PO BOX 10789

Attn: APRIL LAWSON

Effective Date: 11/05/2024
Expiration Date: 12/05/2024
Upon Acceptance Price Valid Until: 12/31/2024

Ship-To Address: E GURLEY ST & N CORTEZ ST / PRESCOTT AZ089554
PRESCOTT AZ 86303

Sales Representative: Andy Ruckman III
Phone: +1 (480) 244-4747
Email: ruckmana@vmcmail.com

200 - Asphalt

Plant	Product ID	Product Name	Qty	U/M	Unit Price
PRESCOTT HMA	271021P	3/4" MAG - Marshall PG64-22	8	TON	\$101.00

Miscellaneous Products

Plant	Product ID	Product Name	Qty	U/M	Unit Price
PRESCOTT HMA	85040	HAULING BY HOUR	1	HOUR	\$200.00

Additional Charges

Product ID	Product Name	Price/%	Per UOM
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SPECIAL INSTRUCTIONS

ASPHALT MATERIALS SUPPLIED FROM VULCAN MATERIALS PRESCOTT PLANT 5234.



Logistics / Hauling:

QUOTED MATERIAL HAUL IS NO GUARANTEE OF HAUL UNIT AVAILABILITY AND VULCAN MATERIALS WILL NOT BE HELD RESPONSIBLE FOR SCHEDULE IMPACT DUE TO HAUL UNIT SHORTAGES ANY DELIVERED LOADS REQUIRE 20TN MINIMUM LOADS AND 20 MINUTES MAXIMUM TIME ON THE JOB OR ADDITIONAL CHARGES MAY APPLY.

HMA:

MATERIAL PRICING IS GOOD TO THE END OF THE QUOTE/SALES ORDER DATE ONLY, REGARDLESS OF THE QUOTE ACKNOWLEDGEMENT OR PO STATUS. ANY MATERIAL PROVIDED AFTER THAT DATE IS SUBJECT TO PRICE INCREASES.

VULCAN MATERIAL PLANTS ARE COMMERCIAL ASPHALT SOURCES THAT PROVIDE A WIDE RANGE OF MIXES TO MULTIPLE CUSTOMERS ON A PRODUCTION DAY. EVERY EFFORT IS MADE TO ENSURE PRODUCTION QUANTITIES AND TIMES FOR EACH CUSTOMER ARE MET. VULCAN WILL NOT BE RESPONSIBLE FOR PROJECT OR TRUCKING IMPACTS DUE TO THE AVAILABILITY TO ALL OUR CUSTOMERS. QUOTE IS ALSO NO GUARANTEE OF PRODUCT OR MATERIAL AVAILABILITY DUE TO CURRENT AGGREGATE DEMAND. PRODUCTION SCHEDULE BASED ON A FIRST COME, FIRST SERVE BASIS AS AVAILABLE. ANY QUANTITIES QUOTED ARE APPROXIMATE AND FINAL PRODUCTION QUANTITIES ARE THE CONTRACTOR'S RESPONSIBILITY. NO SPECIFICATIONS PROVIDED BEFORE QUOTE; THE QUOTED PRICE IS DEPENDENT ON MIX DESIGN APPROVAL.

DUE TO THE CURRENT ASPHALT BINDER MARKET VOLATILITY, ANY VULCAN QUOTE AND/OR SALES ORDERS ARE GOOD UNTIL THE QUOTE EXPIRATION DATE ONLY; REGARDLESS OF THE PRODUCTION SCHEDULE OR QUOTE/SALES ORDER ACCEPTANCE. ANY PRODUCTS PRODUCED/ SOLD AFTER THE EXPIRATION OF THE QUOTE OR SALES ORDER WILL BE REPRICED.



Prices quoted above do not include any state or local sales and use tax, if any applies for this project.
Prices quoted are for shipments during normal daytime working hours unless other shipping hours are mutually agreed upon in writing by both parties.

Prices are FOB your jobsite as stated above. Terms are Net 15 prox. Please note standard terms and conditions apply. (Subject to credit approval)

This quote is limited to acceptance within 30 days from the date of this quotation after which time quotation is subject to review/revision. Please contact Sales prior to placing the order.

Accepted by: _____ **Date:** _____
Sales Representative: _____ **Date:** _____

We appreciate the opportunity to provide you this quote and trust that Vulcan will have the pleasure of serving your needs for this and future projects.



GENERAL TERMS AND CONDITIONS PRICES AND TERMS

Prices are based on the terms and conditions set forth on page 1 of this Quotation, of which these General Terms and Conditions form a part, the terms and conditions stated in Customer's Application for Business Credit, and, if applicable, any terms and conditions relating to the delivery or shipment of materials by truck, barge, vessel, rail or other means which are provided by Vulcan to Customer in addition to this Quotation (each, a "Vulcan Sales Document", and collectively, the "Vulcan Sales Documents"). Prices are available only to the customer specifically named therein, and are only for the quantities mentioned in such Quotation or Sales Order plus or minus 10% of such quantities. A charge of 1.5% per month, (18% annum), will accrue on a daily basis from the date of invoice and will continue to accrue on a daily basis on any unpaid balance, both before and after judgment, until the date the balance is paid in full, or at the maximum amount permitted by law in which the sale occurred, whichever is less. However, the assessment of a finance charge on invoices paid in full by the payment due date will be waived. Quotation is offered for furnishing the total aggregate requirements for the project only. Customer's contract with Vulcan regarding the sale by Vulcan to Customer of the materials listed in this Quotation is subject to the terms and conditions set forth in the Vulcan Sales Documents. Prices reflect Customer's acceptance of materials at the quoted plant based upon gradation analysis performed and reported by Vulcan's certified plant quality control personnel. Any penalties that result from in place sampling shall be the full responsibility of Customer.

THE TERMS AND CONDITIONS OF THE VULCAN SALES DOCUMENTS GOVERN THE RIGHTS AND OBLIGATIONS OF THE PARTIES

If Customer has issued a purchase order for the materials quoted by Vulcan in this Quotation, this Quotation is not an acceptance of said purchase order, or any of its terms or conditions, which are hereby rejected. Any sale by Vulcan to Customer of the materials listed in this Quotation shall be subject to the terms and conditions set forth in the Vulcan Sales Documents, and Customer's receipt or acceptance of said materials shall constitute acceptance of the offer that this Quotation constitutes. Any terms or conditions of a subsequent purchase order issued by Customer that are inconsistent with the terms and conditions of the Vulcan Sales Documents shall be null and void.

SHIPMENT AND DELIVERY

Unless a "delivered" price is quoted by Vulcan in the Vulcan Sales Documents, all prices are F.O.B. point of shipment from the locations designated. All taxes applicable to the sale or delivery of materials that are not paid directly by Customer will be added to the sales price, invoiced to and paid by Customer, unless Customer provides Vulcan with satisfactory evidence of exemption from same. Shipment will be in accordance with Customer's reasonable instructions or, if none, then by whatever means Vulcan shall deem practicable. The quantities of material delivered to Customer shall be conclusively presumed to be the quantities shown on the tickets produced from a certified weigh scale at Vulcan's quarry or sales yard.

CREDIT AND DEFAULT

Vulcan shall have no obligation to ship or deliver except upon its determination prior to each shipment or delivery that Customer is worthy of the credit to be extended and is not in default upon any obligation to Vulcan. Upon default, Customer agrees to pay all of Vulcan's collection expenses, including attorneys' fees.

INSURANCE

A Memorandum of Insurance containing current information regarding Vulcan's insurance program is available at <https://marshdigital.marsh.com/marshconnect/viewMOI.action?clientId=632529479>

EXCULPATORY PROVISIONS

Vulcan shall have no liability for delay or failure to make shipments, or delivery, as a result of strikes, labor problems, severe weather conditions, casualty, mechanical breakdown or other conditions beyond Vulcan's reasonable control. In no event shall Vulcan be liable for any incidental or consequential damages. Vulcan's liability and Customer's exclusive remedy for any cause of action arising out of the provision of material quoted herein shall be the replacement of, or payment of the purchase price for, the materials which are the subject of this Quotation.

CHANGE OF TERMS

Vulcan may change the price and/or quantity upon 30 days' notice to Customer. Vulcan shall also have right to change, modify or amend any other terms and conditions upon written notice of such change to customer. The effect of the change shall be as stated in the written notice and accepted by Customer upon placing of orders with seller following receipt of such notice.

APPLICABLE LAW

All orders are subject to acceptance by Vulcan at the headquarters of its Mountain West Division in Phoenix, Arizona, and the laws of the state in which the materials were shipped from shall apply to the sale of all materials subject hereto. In the event material is imported into the U.S., the law in the state in which the material was sold to the customer will prevail. All disputes regarding finance charges shall be governed by Alabama law.

LIMITED WARRANTY AND WARRANTY DISCLAIMER

Vulcan warrants for a period of one (1) year from date of delivery only that the material sold hereunder substantially complies with Vulcan's specifications for said material or the specifications set forth in Vulcan's quotation. **VULCAN HEREBY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF THE MATERIAL SOLD HEREUNDER, OTHER THAN THE EXPRESS WARRANTY STATED ABOVE.** In addition, except to the extent otherwise set forth in the specifications described above, Vulcan makes no warranty whatsoever with respect to specific gravity, absorption, whether the material is innocuous, non-deleterious, or non-reactive, or whether the material is in conformance with any plans, other specifications, regulations, ordinances, statutes, or other standards applicable to Customer's job or to said material as used by Customer. **VULCAN SHALL IN NO EVENT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE CAUSED BY NON-COMPLIANCE OF THE MATERIAL WITH SPECIFICATIONS, OR FOR ANY DEFECTS IN THE MATERIAL SOLD HEREUNDER**





Please return this completed form to sticklandjas@vmcmail.com. Please call 726-201-0422 with any questions.

JOB INFORMATION

Date: _____ Vulcan Customer Number: _____

CUSTOMER NAME: _____

Customer Role (circle one): **Owner** **GC** **Sub-Contractor** **Sub-Sub***
*if sub-sub, provide sub at bottom of form

Job Name: _____ Your Job Number: _____

Legal Description: _____

Project Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Customer Contact: _____

PROJECT OWNER: _____

Owner Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Owner Contact: _____

Tax Status (circle one): **Y*** **N** **If Tax Exempt an exemption form must be attached*

GENERAL CONTRACTOR: _____

GC Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ GC Contact: _____

BONDING COMPANY: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Contact: _____

Type (circle one) **Federal** **State** **City** **County** **Private**





TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 8.G
SUBJECT: Approval of Purchase Order for the Purchase of Traffic Bollards from Blue Ember Technologies, LLC., in the Total Amount of \$73,520.00. Funding is Budgeted & Available in the Streets Fund.

ITEM SUMMARY

This item is for the approval of the purchase of Maxiforce Traffic Bollards to be used by the City's Job Order Contract (JOC) contractor in the construction of the Downtown Bollard Project at various intersections in downtown Prescott. The city is purchasing this equipment separately so that long lead time Traffic Bollards do not delay the project schedule, and to accommodate a JOC project type.

BACKGROUND

This request is for the purchase of fifty-five (55) Maxiforce MRHP-RS3-HDH6 removable powder coated traffic bollards and lockable sleeves to be used by the City's Job Order Contract (JOC) contractor in the construction of the Downtown Bollard Project (Project). These bollards will be used for a portion of Phase 1 (FY25) and all of Phase 2 (FY26) of the Project.

Currently the city uses Solid Waste and Streets vehicles when closing intersections for special events and parades downtown as additional protection for attendees. City employees must be mobilized, vehicles driven to the needed locations, set up and then removed for each event. The installation of removable bollards is already used at various locations downtown for special events and is being expanded through the FY25 Project to add an addition four street locations. The bollards provide the necessary safety and reduces city costs associated with these events by decreasing the needed human and vehicle resources and the time necessary in setting up the vehicles, barricades needed for these locations to be closed and reopened.

To support the Project and reduce scheduling delays due to long lead time for Traffic Bollards, Public Works is purchasing bollards which have a long lead time (up to 10 weeks) for delivery separately from the project. This equipment is being purchased from Blue Ember Technologies, LLC., in a total amount of \$73,520.00 (quote #20250113-121704851) using a sole source procurement and not a requiring a City Contract document. The use of this one brand allows the bollards to be interchangeable from location to location and reduces the need to store and install various bollard brands and types.

FINANCIAL IMPACT

Funding for this purchase will come from the budget for the Downtown Bollard Project within the Street Fund.

RECOMMENDED ACTION

MOVE to approve PO for the purchase of traffic bollards

ATTACHMENTS

1. Purchase Order Detail & Description

2. Downtown Bollard Map Overall Locations



Quotation Number: 20250113-121704851

Quote created: January 13, 2025

Quote expires: January 27, 2025

Reference: City of Prescott Public Works Removable Bollards, Prescott, AZ

Quote created: January 13, 2025

Blue Ember Technologies, LLC
7560 Main Street
Sykesville, MD 21784
410-552-9888 Phone
410-552-9939 Fax

Bill To:
City of Prescott
201 North Montezuma Street
Prescott, AZ 86303
Att: Ian Mattingly

ian.mattingly@prescott-az.gov

(928) 777-1130

Ship To:

Same as billing address

Dear Ian,

Thank you for the opportunity to support you on your project. We are pleased to quote the following Blue Ember standard products on a furnish-only basis in response to your recent request.

Blue Ember Technologies, LLC proposes to furnish-only the following:

PRICE PROPOSAL

NAME	DESCRIPTION	QUANTITY	UNIT PRICE	NET PRICE
MRHP-RS3-HDH6	MaxiForce Removable (MR) Bollard, Heavy Duty (H) Body, Padlock (P) Operated, Round Style 3 (RS3) Welded on Dome Style Cap, Heavy Duty Hinge Top (HDH) Base, 6" Bollard (6), Padlock Not Included. Lid of base to be stainless steel. Bollard to be fabricated from 6" schedule 40 pipe (outside diameter of pipe 6.625") with a 46" overall bollard body length (38" above grade, 8" below grade). Base to be 18" below grade.	55	\$975.00	\$53,625.00
PC-HD6	Powder Coat The Entire 6" Bollard Assembly - bollard color to be Brick Red 38/30028, bases to be Black Fine Texture	55	\$125.00	\$6,875.00
PC-HD6	Powder Coat The Entire 6" Bollard Assembly - Zinc Rich Primer	55	\$85.00	\$4,675.00
Custom	Non standard powder coat color	1	\$150.00	\$150.00
SUBTOTALS				NET PRICE
One-time subtotal				\$65,325.00
OTHER FEES				NET PRICE
Freight				\$8,195.00
Total		\$73,520.00		

FABRICATION LEADTIME: We propose to ship the bollards in 2 shipments - 1st shipment of approx 28 bollards to ship 8-10 weeks after release to fabrication. 2nd shipment of approx 27 bollards to ship approx 8-10 weeks after 1st shipment. We reserve the right to invoice after each shipment with each invoice to include the freight cost for that shipment (freight price in quote is for the total order, not a per shipment cost) (fabrication lead time is tentative and subject to change depending on shop load at time order is released to fabrication)
Visit www.maxiforcebollards.com for more product data.

NOTES: (1) Due to increases and volatility in steel prices we are including steel surcharges in our pricing.

Powder coat pricing included in quote is for one of our standard Tiger Drylac colors – Safety Yellow, Bengal Black (high gloss finish), Black SemiGloss, Black Matte, High Reflective White, Bengal Light Grey, Roman Bronze Matte (dark brown), and Silver. If a color is selected that is not one of our standard colors, but is a Tiger Drylac Stock color, there will be a single charge of \$150.00 added to the order total. Color charts are available for preview on our website. Not all colors shown on the color charts are Tiger Drylac Stock colors and pricing may vary for those.

Purchase orders received after quote validity dates will need to be reviewed for pricing of material and freight. Purchase orders must be released by the customer to enter fabrication within 30 days of the purchase order date. All purchase orders older than 30 days which have not entered fabrication will need to be reviewed for pricing of material and freight, or result in a cancelled order/contract. Payment terms are net 30 days from date of invoice. All quotes and invoices are in US dollars.

As a material supplier only, Blue Ember Technologies, LLC does not assume responsibility for take offs on the projects quoted. All quotes are based on take off information provided by the requestor. It is the responsibility of the requestor to verify that products and quantities quoted comply with their requirements. **Note that freight pricing includes shipping only – it does not include a delivery appointment or liftgate service at delivery location. Offloading of the material is the customer’s responsibility unless additional services are requested. Special circumstances with the delivery location (ie: residential delivery, limited access delivery, etc) that are not known in advance may impact the final shipping charges. If any services are needed pricing may be affected.**

Again, thank you for the opportunity to serve you during the bid process for this project. Please contact **Karen Dzialowski** at the above address, by email at karen@maxiforcebollards.com or kdzialowski@blueember.com, or by phone at 410-552-9888 with any questions pertaining to this proposal.

An order can be placed by signing the quote where indicated below, or by submitting a purchase order to Blue Ember Technologies, LLC. Faxed or emailed copies are acceptable. If submittals for approval are needed prior to releasing the order to fabrication please indicate that below. If submittals are not needed the order will be fabricated based on our standard for the product quoted.

Submittals required prior to fabrication release _____
Order can be released to fabrication _____

Powder coat color for bollard and head (note that the base will be Black)_____

Client acceptance:

I hereby accept this quote and the Blue Ember Technologies, LLC terms and conditions:

Name: _____ Date: _____

Signed: _____

Title: _____

BLUE EMBER TECHNOLOGIES, LLC.

GENERAL TERMS AND CONDITIONS OF SALE

The following terms and conditions (the "General Conditions" or this agreement) apply to any sale of products (the "Products") by Blue Ember Technologies (dba "Blue Ember Technologies, LLC").

1. GENERAL. THESE GENERAL CONDITIONS, TOGETHER WITH ANY NONCONFLICTING PROVISION IN BLUE EMBER TECHNOLOGIES, LLC'S QUOTATION, ARE INTENDED BY THE PARTIES AS THE FINAL EXPRESSION, AND CONTAIN THE COMPLETE AND EXCLUSIVE STATEMENT, OF THE TERMS AND CONDITIONS OF THIS AGREEMENT SUPERSEDING ALL PREVIOUS OR SIMULTANEOUS COMMUNICATIONS EITHER ORAL OR WRITTEN. Any quotation by Blue Ember Technologies, LLC is an offer that may only be accepted in full by Purchaser. In the event the Purchaser's purchase order or other form states terms additional to or different from those set forth in this document, this writing shall be deemed notification of objection to such additional or different terms. Accordingly, this Agreement is expressly made conditional on Purchaser's acceptance and assent to the conditions contained on the face and reverse side hereof. Acceptance of the condition contained herein shall be deemed to have occurred at the earlier of (i) seven calendar days from the date specified on Blue Ember Technologies, LLC's acknowledgment form unless written notice of objection is received by Blue Ember Technologies, LLC prior to lapse of such seven day period, (ii) Blue Ember Technologies, LLC's identification of existing goods as goods to which this Agreement refers, or (iii) onset of Blue Ember Technologies, LLC's provision of future goods. This agreement cannot be waived, varied, modified, or amended except in a writing signed by authorized representative of Blue Ember Technologies, LLC, nor shall the Agreement be waived, varied, modified, or amended by any subsequent course of conduct between the parties.
2. PRICE. Unless otherwise stated, applicable prices for the Products sold hereunder are net FOB (INTERCOMS 1990) factory ("FOB"), with freight and insurance for Purchaser's account, and shall be those prices in effect at the time Blue Ember Technologies, LLC accepts Purchaser's order except as provided below. Because Blue Ember Technologies, LLC's prices are based on costs and conditions existing on the date of acceptance, prices are subject to change as those conditions change. Accordingly, all orders are subject to increase in price of materials and labor while completing the work hereunder.
3. TAXES. Prices exclude all duties, taxes, tariffs, or other governmental charges that now are, or hereafter may be, imposed upon the sale or use of the Products. All such duties, taxes, tariffs, or other charges paid by Blue Ember Technologies, LLC shall be for Purchaser's account. Any exemption claimed paid by Blue Ember Technologies, LLC shall be for Purchaser's account. Any exemption claimed from the application of such duties, taxes, tariffs, or other charges should be plainly designated on the face of orders placed with Blue Ember Technologies, LLC and accompanied by exemption certificates where required.
4. PAYMENT. Payment for Products is due as specified on the first page of Blue Ember Technologies, LLC's order acknowledgment. Blue Ember Technologies, LLC may require payment to made through an irrevocable letter of credit in favor of and acceptable to Blue Ember Technologies, LLC and established by Purchaser at its expense.
5. DELINQUENT PAYMENTS. In the event Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay to Blue Ember Technologies, LLC the reasonable costs and expenses incurred by Blue Ember Technologies, LLC in connection with all actions taken to enforce collection or to preserve and protect Blue Ember Technologies, LLC's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorney's fees, court costs and other expenses. In addition, to the extent permitted by Purchaser's local law, interest on all amounts unpaid after thirty (30) days may be charged at the annual rate of 1-½ percent per month or the highest rate permitted by law, whichever is lower. If any invoice is not paid when due, Blue Ember Technologies, LLC may suspend delivery of Products or other performance with respect to Purchaser without liability or penalty.
6. TITLE AND SECURITY INTEREST. Blue Ember Technologies, LLC reserves, and Purchaser hereby grants to and creates in favor of Blue Ember Technologies, LLC, a first priority purchase money security interest in each Product (or the equivalent under Purchaser's local law), including all component parts added by modification or repair, and all proceeds from the sale thereof, until full payment is received. Purchaser agrees to sign upon request, and hereby authorizes Blue Ember Technologies, LLC to sign on its behalf and as its attorney in fact, any documents necessary to perfect Blue Ember Technologies, LLC's security interest. Upon resale, Purchaser agrees to take, and immediately assign to Blue Ember Technologies, LLC, a perfected security interest in each Product.
7. COMMENCEMENT OF FABRICATION. Blue Ember Technologies, LLC will not, and is under no obligation to, commence fabrication of any Products ordered hereunder until:

a) All complete contract plans, drawings and specifications have been delivered to Blue Ember Technologies, LLC;

b) All detail drawings submitted by Blue Ember Technologies, LLC have been finally approved by all authorities whose approval is required;

c) Blue Ember Technologies, LLC has received all necessary information from other trades which affect or are related to our work or Products;

d) Blue Ember Technologies, LLC shall have received after completion of (a), (b) and (c), reasonable notice to commence fabrication of such Products; and

e) All credits or debits for changes in quantity or design of material furnished shall have been accepted in writing by Purchaser.
8. SHIPMENT: DELIVERY: CLAIMS. Unless otherwise agreed in writing by the parties, shipment and delivery of the Products shall be made FOB. Accordingly, costs for shipment, insurance or similar charges shall be borne by the Purchaser. Delivery of the Products to the first carrier shall constitute delivery to Purchaser. As of delivery to the first carrier, risk of loss is transferred to Purchaser, and all claims for loss or damage in transit or for non-delivery shall be made by Purchaser against the carrier. Notwithstanding the FOB destination, Blue Ember Technologies, LLC reserves the right to select any mode of transportation. At Blue Ember Technologies, LLC's option, Products may be shipped in advance of requested shipment date or in installments or partial lots. Any delivery information (including time for shipment) is approximate. Blue Ember Technologies, LLC's sole responsibility will be to use reasonable commercial efforts to meet specified shipment dates. Purchaser expressly acknowledges that Blue Ember Technologies, LLC shall not be liable for any loss or damage resulting from a failure to deliver or delays in delivery caused by a labor dispute (including a strike,

slowdown, or lockout), fire, flood, or governmental act or regulation, riot, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carriers, accidents, governmental regulations, including without limitation, failure to obtain export licenses, acts of God or other causes beyond Blue Ember Technologies, LLC's control. NOTWITHSTANDING THE ABOVE, BLUE EMBER TECHNOLOGIES, LLC SHALL NOT BE LIABLE FOR ANY DAMAGE OR PENALTIES WHATSOEVER, WHETHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, RESULTING FROM BLUE EMBER TECHNOLOGIES, LLC'S FAILURE TO DELIVER OR DELAY IN DELIVERY FOR ANY REASON.

9. INSPECTION. Within five business days of receipt of the Products, Purchaser shall inspect the Products to check for shortages or any other nonconformity. Unless Purchaser shall thereafter notify Blue Ember Technologies, LLC in writing of any nonconformity (other than that relating to loss or damage in transit, which claims shall be made directly to the carrier) within ten business days of inspection, Purchaser shall be deemed to have accepted the Products without any qualifications and cannot, thereafter, reject the Products for any reason. In any event, Products accepted and used shall be deemed to have been accepted in good condition and in compliance with the specification and order therefor.

10. CANCELLATION. This Agreement cannot be canceled or postponed by the Purchaser except with Blue Ember Technologies, LLC's consent and upon terms that will indemnify Blue Ember Technologies, LLC against loss. Accordingly, Purchaser shall pay Blue Ember Technologies, LLC the greater of (i) a charge equal to 10% of its total price or (ii) reasonable cancellation charges, Blue Ember Technologies, LLC's anticipated profit, and expenses already incurred by Blue Ember Technologies, LLC in performing or preparing to perform the work required by Purchaser's order, as invoiced by Blue Ember Technologies, LLC.

11. WARRANTY. Subject to the warranty limitation set forth in Section 12 below, Blue Ember Technologies, LLC warrants that the Products sold hereunder will substantially conform to the applicable specifications and will be free from defects in material and workmanship unconditionally for one (1) year after shipment FOB, under normal and proper use and service. Shop drawings prepared by Blue Ember Technologies, LLC and approved by Purchaser shall be deemed the correct interpretation of the work to be performed even when not consistent with the plans and specifications.

12. WARRANTY LIMITATION. The warranty and remedies for breach of warranty provided for in these General Conditions extend only to the original installation and do not cover, and Blue Ember Technologies, LLC shall not be liable for, (i) abnormal wear and tear or damage caused by improper installation, maintenance or use contrary to the instructions published by Blue Ember Technologies, LLC, (ii) storage of Products in a wet or damp area or unprotected from weather and other job conditions, (iii) any cause beyond the control of Blue Ember Technologies, LLC, including without limitation conditions caused by movement, settlement or structural defects of the building in which the Products are installed, fire, wind, hail, flood, lightening or other acts of God, international acts, accidents, negligence or exposure to harmful chemical pollutants or other foreign matter or energy, (iv) repair or damage caused by anyone except personnel authorized by Blue Ember Technologies, LLC, or (v) any scratches, abrasions or other damage to the finish of painted items after they leave the factory. Items repaired or replaced and designs corrected under warranty are warranted only for the remainder of the original warranty period. Any general Product literature is for illustrative purposes only and does not constitute a warranty of any kind. Purchaser accepts full responsibility for the selection of the Products to achieve intended results. THE WARRANTY SET FORTH IN SECTION 11 IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. REMEDY. Purchaser's sole and exclusive remedy, and Blue Ember Technologies, LLC's only obligation for breach of warranty for Products furnished hereunder, shall be, at Blue Ember Technologies, LLC's option, to repair or replace the defective item or part that fails within one year warranty period of Section 11, free of charge, provided that Purchaser promptly gives notice to Blue Ember Technologies, LLC of such failure, returns such item or part to Blue Ember Technologies, LLC, freight prepaid, and upon examination Blue Ember Technologies, LLC finds such to have been defective. Purchaser must pay for related costs of making the repair or replacement, including the costs of removal, installation or reinstallation of the Products. In the event Purchaser claims that the Products are defective, it must allow Blue Ember Technologies, LLC personnel access and permission to inspect the Products at the site of installation or use.

14. DISCLAIMER: LIMITATION OF LIABILITY, TIME FOR CLAIMS. Purchaser understands and agrees that Blue Ember Technologies, LLC shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES including but not limited to loss of profit or revenues, damage for loss of the use of the Products, damage to property, claims of third parties, including personal injury or death suffered as a result of use of Products or failure of Blue Ember Technologies, LLC to warn, or to adequately warn, against the dangers of the Products or to instruct, or to adequately instruct, about the safe and proper use of the Products whether or not Blue Ember Technologies, LLC has been advised of the potential for such damages. The total liability of Blue Ember Technologies, LLC to Purchaser from any cause whatsoever, whether arising under contract, warranty, tort, (including negligence), strict liability, products liability or any other theory of liability, will be limited to the lesser of Purchaser's actual damages or the purchase price paid to Blue Ember Technologies, LLC for the Products that are the subject of Purchaser's claim. However, this limitation of liability does not apply to damages resulting from personal injury caused by Blue Ember Technologies, LLC's negligence. All claims against Blue Ember Technologies, LLC must be brought within one year after the cause of action arises, and Purchaser expressly waives any statute of limitations which might apply by operation of law or otherwise.

15. RESALE OF PRODUCTS. Upon resale of any Products sold hereunder, Purchaser agrees to extend to its customers no greater warranties than those contained herein and limit its liability and remedies to the same extent as those set forth herein.

16. PURCHASER SPECIFICATION. Blue Ember Technologies, LLC assumes no liability for any errors or omissions in any specification provided by Purchaser, including any errors or omissions made by Blue Ember Technologies, LLC in the interpretation of any such specifications. Any items included in any specifications provided by Purchaser and not listed and priced on Blue Ember Technologies, LLC's proposal or invoice are not part of this Agreement. Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless Blue Ember Technologies, LLC against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorney's fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to property caused by the designs, or specifications or instructions provided by or required for Purchaser which are incorporated by Blue Ember Technologies, LLC in the Products.

17. INFRINGEMENT WARRANTY. If a claim is made that any Product sold hereunder infringes any product rights of another, Blue Ember Technologies, LLC will be responsible only for claims based on a valid U.S. Patent or copyright. Blue Ember Technologies, LLC will defend the claim and hold Purchaser harmless from any final award of damages in such a patent or copyright infringement claim, provided that Purchaser gives Blue Ember Technologies, LLC prompt notice of the claim and information, reasonable assistance and authority to defend and settle the claim. In the defense or settlement of the claim Blue Ember Technologies, LLC may: (i) obtain for Purchaser the right to continue using the Product; (ii) replace or modify the Product to be non-infringing; or (iii) recall the Product and refund the purchase price. The warranty shall not apply to claims based solely on any third-party parts incorporated in the Products, or to Products manufactured to Purchaser's designs, specifications or instructions, or to claims of infringement based on claimed rights other than patent or copyright, except that as to such other claims, Blue Ember Technologies, LLC at its option may elect to defend against such claims without warranty as to award of damages. INFRINGEMENT WARRANTIES OR OBLIGATIONS NOT SPECIFICALLY STATED IN THIS SECTION ARE SPECIFICALLY DISCLAIMED.

18. GOVERNMENTAL AUTHORIZATIONS. If the destination of any shipment made by Blue Ember Technologies, LLC hereunder is outside the United States, Blue Ember Technologies, LLC will be responsible for applying, in its own name, for any required U.S. export license, and Purchaser will be responsible for timely obtaining and maintaining any required import license, exchange permit or any other governmental authorization required for the import of the Products and the remittance of payments to Blue Ember Technologies, LLC. Blue Ember Technologies, LLC and Purchaser will assist each other when such help is reasonably possible.

19. EXPORT CONTROLS. Purchaser warrants that it is and will remain in compliance with all export and reexport requirements, including, but not limited to the Export Administration Act and regulations, the Arms Export Control Act and regulations, the Trading with the Enemy Act and regulations, and any orders and licenses issued thereunder (collectively the "Export Law"). Purchaser additionally warrants that it has not been, and is not currently, disbarred, suspended, prohibited or impaired from exporting, reexporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity or technical data regulated by any agency of the government of the United States. In particular, Purchaser hereby gives assurance that unless notice is given to and prior authorization is obtained as required by the Export Laws, Purchaser will not knowingly reexport, directly or indirectly, the Product or any technical data shipped by Blue Ember Technologies, LLC to Purchaser or the direct Product thereof to Country Groups Q, S, W, Y or Z (as defined in the Export laws) or any other prohibited country.

20. SEPARABILITY: INVALIDITY. If any portion of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid and unenforceable provisions will continue to be given effect and bind the parties hereto.

21. GOVERNING LAW. This instrument shall be deemed an agreement made under the laws of the State of Maryland governed by the laws of the State of Maryland without regard to its conflict of laws provisions and excluding the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in the State of Maryland.

22. SUCCESSION. The provisions of this Agreement shall bind and insure the benefit of the successors and assigns of the parties hereto.

Bollard Map 2024

#7

Bollards on south leg
at Sheldon Street

- Currently Installed
- Needed to Complete Parade Route
- Needed to Support Multiple Events

GRANITE ST

MONTEZUMA

CORTEZ

MARINA

Sheldon St

WILLIS ST

GURLEY ST

#11

#12

#1

#2

#13

Court
House

#4

UNION

#14

GOODWIN ST

#6

#9

#10

#5

#8

CARLETON ST



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 8.H
SUBJECT: **FNP24-001** - A Dedication of a Right-of-Way for the Next Phase of Jenna Lane and James Lane Within the Deep Well Ranch Master Plan. Location is West of Willow Creek Road & North of State Route 89A.

ITEM SUMMARY

This item is for approval of the proposed dedication of a road right-of-way for the creation of a public street connecting the approved South Ranch Residential Development to Willow Creek Road per the Deep Well Ranch Master Plan. The right-of-way will also include the extension of water and sewer utilities connecting to those in Willow Creek Road.

BACKGROUND

This dedication was originally part of the planned circulation as a major road in the Deep Well Ranch Master Plan. Preliminary grading has been underway, however full improvement plans and permits are submitted and being reviewed for the infrastructure and street construction components. This map of dedication (Exhibit A) will create the right-of-way. Exhibit B -Vicinity Map shows the general location of roads being dedicated to the City.

FINANCIAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDED ACTION

MOVE to approve FNP24-001

ATTACHMENTS

1. Exhibit A - Jenna Lane NW MOD 011425 (Final)
2. Exhibit B - Vicinity Map - Jenna and James Lane

MAP OF DEDICATION

LOCATED IN SECTION 35
TOWNSHIP 15 NORTH, RANGE 2 WEST
OF THE G&SRB&M, YAVAPAI COUNTY, ARIZONA
330,892.06 SF OR 7.60 ACRES

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

THAT CDC PRESCOTT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, AS SOLE OWNER OF THAT CERTAIN REAL PROPERTY SITUATED WITHIN SECTION 35, TOWNSHIP 15 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, HEREBY:

1. DEDICATES, GRANTS, AND CONVEYS TO THE PUBLIC THE STREETS, IN FEE, SHOWN ON SAID PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES; AND

2. SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE DIMENSIONS OF THE STREETS, TRACTS AND EASEMENTS CONSTITUTING SAME, AND THAT EACH STREET AND TRACT SHALL BE KNOWN BY THE NUMBER, LETTER, OR NAME GIVEN EACH RESPECTIVELY, AS SHOWN ON SAID PLAT.

3. THIS PLAT HEREBY DEDICATED TO THE CITY OF PRESCOTT FOR USE BY THE CITY AND ITS PERMITEES, EXCLUSIVE PUBLIC UTILITY EASEMENTS ("PUE") IN TRACTS E AND F, AS SHOWN ON THIS PLAT. SUCH PUBLIC UTILITY EASEMENTS ARE FOR THE PURPOSE OF INSTALLING, OPERATING, MAINTAINING, REPLACING, AND OR REPAIRING PUBLIC UTILITIES, IN, OVER, ABOVE, AND UNDER THE PUBLIC UTILITY EASEMENT AREAS AS SHOWN ON THIS PLAT.

4. TRACT E AND F ARE RESERVED IN FEE BY THE UNDERSIGNED TO BE CONVEYED TO THE PROPERTY OWNERS ASSOCIATION AT SUCH TIME AS REQUIRED BY SPECIFIC DETAILS WITHIN THE BYLAWS FOR THE PROPERTY OWNERS ASSOCIATION, INC. FOR THE PURPOSES OF THOSE REQUIRED BY THE CITY OF PRESCOTT AND THE DEEP WELL RANCH MASTER PLAN.

5. SLOPE AND DRAINAGE EASEMENTS ARE DEDICATED TO THE HOA FOR THE PURPOSES OF THOSE REQUIRED BY THE CITY OF PRESCOTT AND THE DEEP WELL RANCH MASTER PLAN.

IN WITNESS WHEREOF:

CDC PRESCOTT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY AS SOLE OWNER, HAS CAUSED THE NAME OF SAID COMPANY TO BE AFFIXED HERETO AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF JAMES M. CHAMBERLAIN, PRESIDENT, BEING DULY AUTHORIZED TO SO DO, ON THIS _____ DAY OF _____, 2025.

CDC PRESCOTT, L.L.C.,
an Arizona limited liability company

BY: _____
James M. Chamberlain, President

ACKNOWLEDGEMENT

STATE OF ARIZONA)
)SS
COUNTY OF YAVAPAI)

ON THIS _____ DAY OF _____, 2025, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, DID PERSONALLY APPEAR JAMES M. CHAMBERLAIN, PRESIDENT OF CDC PRESCOTT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, AND AS SUCH, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE THEREIN CONTAINED, BEING DULY AUTHORIZED TO SO DO,

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

RATIFICATION

STATE OF ARIZONA)
) SS
COUNTY OF YAVAPAI)

BY THIS RATIFICATION, ASH-DORN, LLC., HAVING AN INTEREST IN AND TO THE REAL PROPERTY DESCRIBED ON THIS MAP OF DEDICATION, HEREBY ACKNOWLEDGES, APPROVES, AND CONSENTS TO THE RECORDATION OF SAID PLAT AND ALL MATTERS SHOWN HEREON INCLUDING BUT NOT LIMITED TO THE SLOPE AND DRAINAGE EASEMENTS AFFECTING THE FORGOING PROPERTY BY THE SIGNATURE OF THE DULY AUTHORIZED OFFICER.

PRINT _____ ITS _____

APPROVALS

APPROVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF PRESCOTT ON THIS _____ DAY OF _____, 2025.

MAYOR

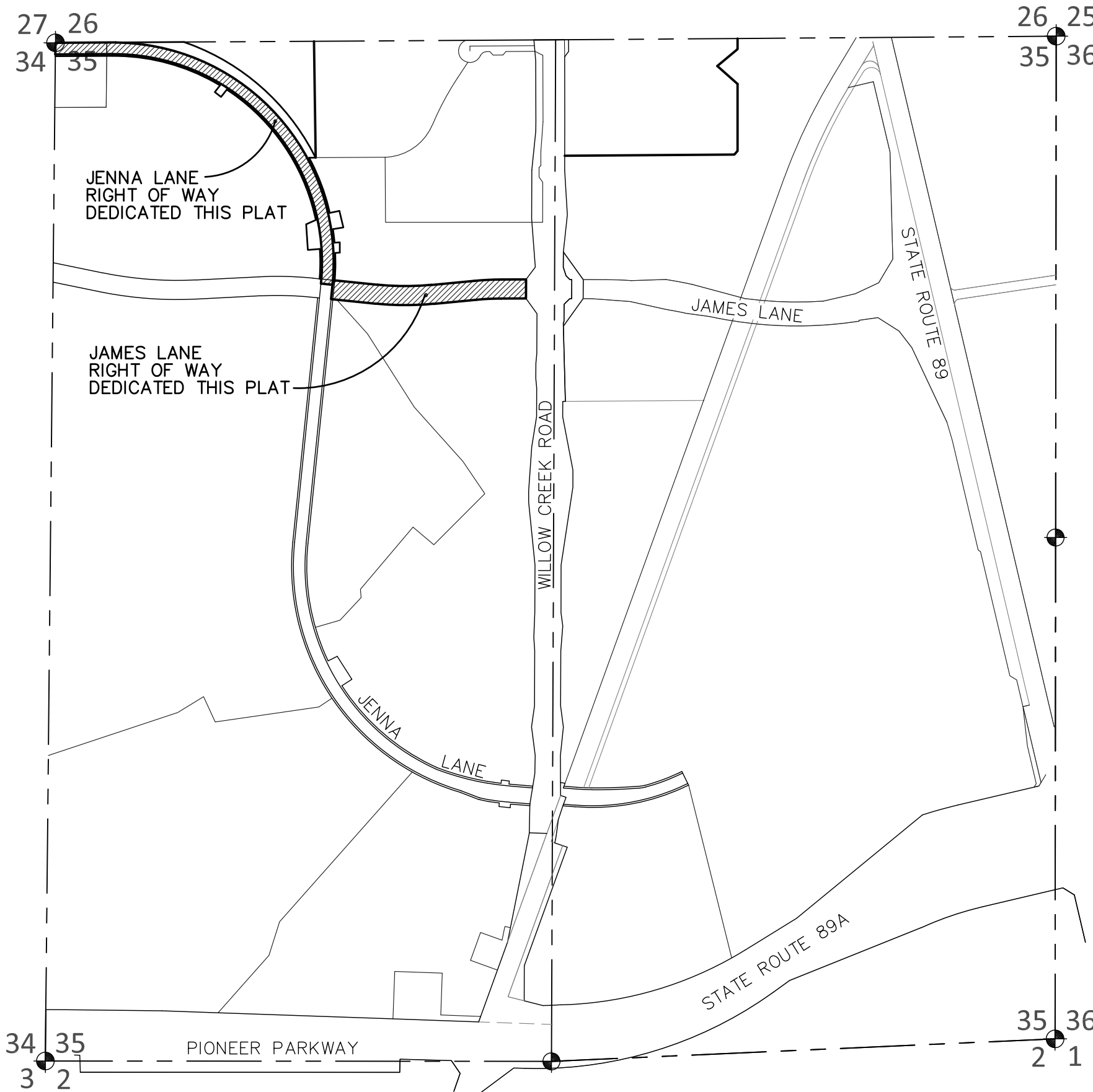
CITY CLERK

APPROVED BY THE CITY OF PRESCOTT PUBLIC WORKS DEPARTMENT ON THIS _____ DAY OF _____, 2025.

PUBLIC WORKS DIRECTOR

APPROVED BY THE CITY OF PRESCOTT COMMUNITY DEVELOPMENT DEPARTMENT ON THIS _____ DAY OF _____, 2025.

COMMUNITY DEVELOPMENT DIRECTOR



VICINITY MAP
N.T.S.

ROW AREA

ROW	AREA (SF)	AREA (ACRES)
JENNA LANE	133,372.15	3.06
JAMES LANE	102,168.46	2.35

TRACT AREA

TRACT	AREA (SF)	AREA (ACRES)
E	30,590.84	0.70
F	64,760.61	1.49

BASIS OF BEARINGS:

S00°34'01"W AS MEASURED ALONG THE WEST LINE OF SECTION 35. ALL BEARINGS SHOWN ARE BASED ON THE CITY OF PRESCOTT COORDINATE SYSTEM AS PUBLISHED ON THE CITY OF PRESCOTT WEBSITE. C.O.P. COORDINATE TIE SHOWN ON MAP

NOTES

1. ALL RIGHT OF WAY AND TRACT CORNERS TO BE SET AT THE COMPLETION OF CONSTRUCTION.

CERTIFICATION

I, SCOTT A. LYON, a duly Registered Land Surveyor in the State of Arizona, (License #46650) do hereby certify that I prepared this plat from an actual and accurate survey of the land; that the survey and subdivision of the premises described and platted hereon was made by me or under my direct supervision during the month(s) of January, 2025; that the monuments shown actually exist or will be set as shown; that their positions are accurately shown; and that said monuments are sufficient to enable the survey to be retraced.

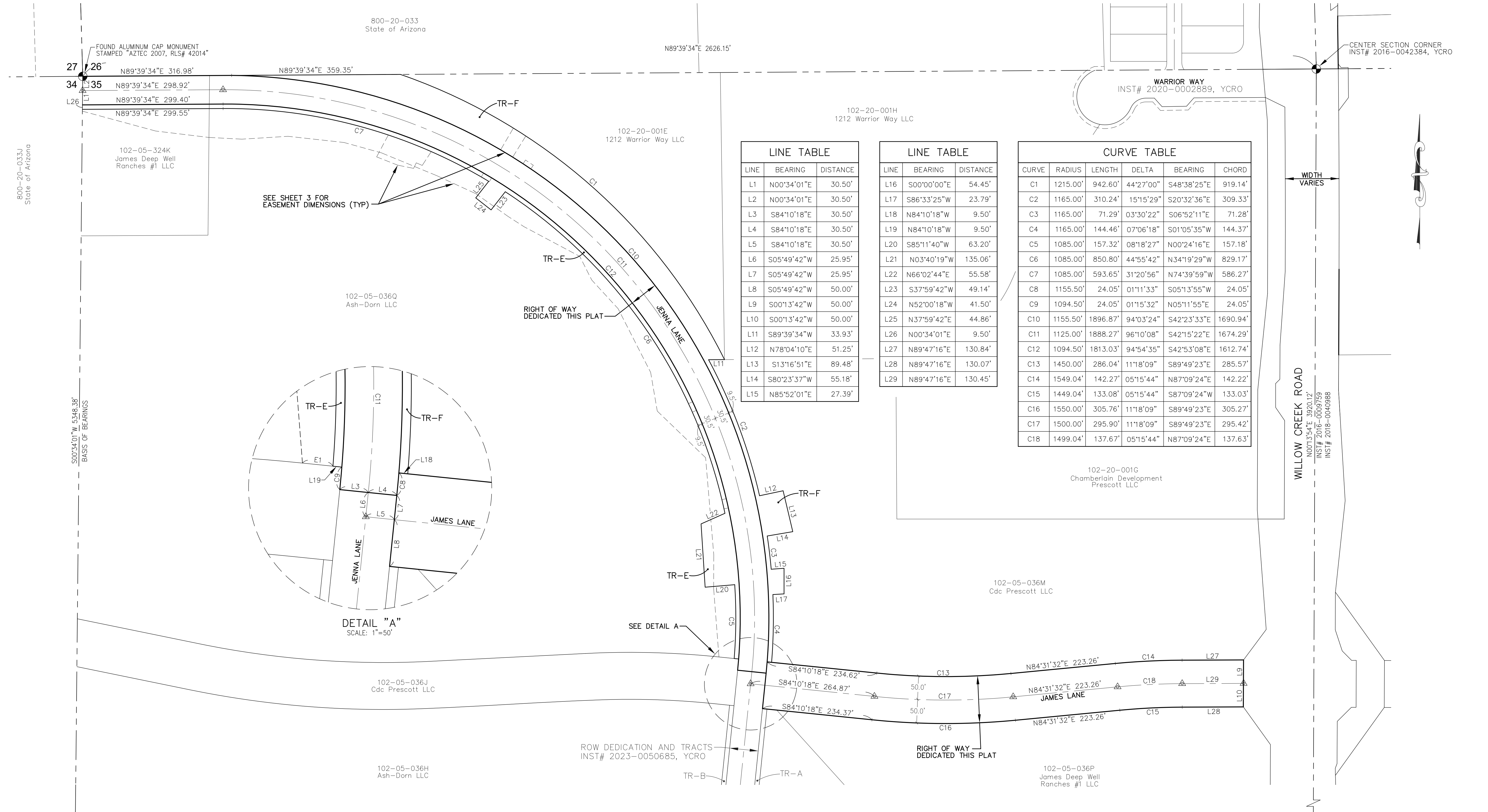


1650 Willow Creek Road
Prescott, AZ 86301
(928) 776-1750
www.LyonEngineering.com
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DATE: 01-14-25	DRAWN BY: RJW
JOB NO: 903-56	CHECKED BY: DS
SHEET 1 OF 3	

MAP OF DEDICATION

RIGHT OF WAY
LOCATED IN SECTION 35
TOWNSHIP 15 NORTH, RANGE 2 WEST
OF THE G&SRB&M, YAVAPAI COUNTY, ARIZONA

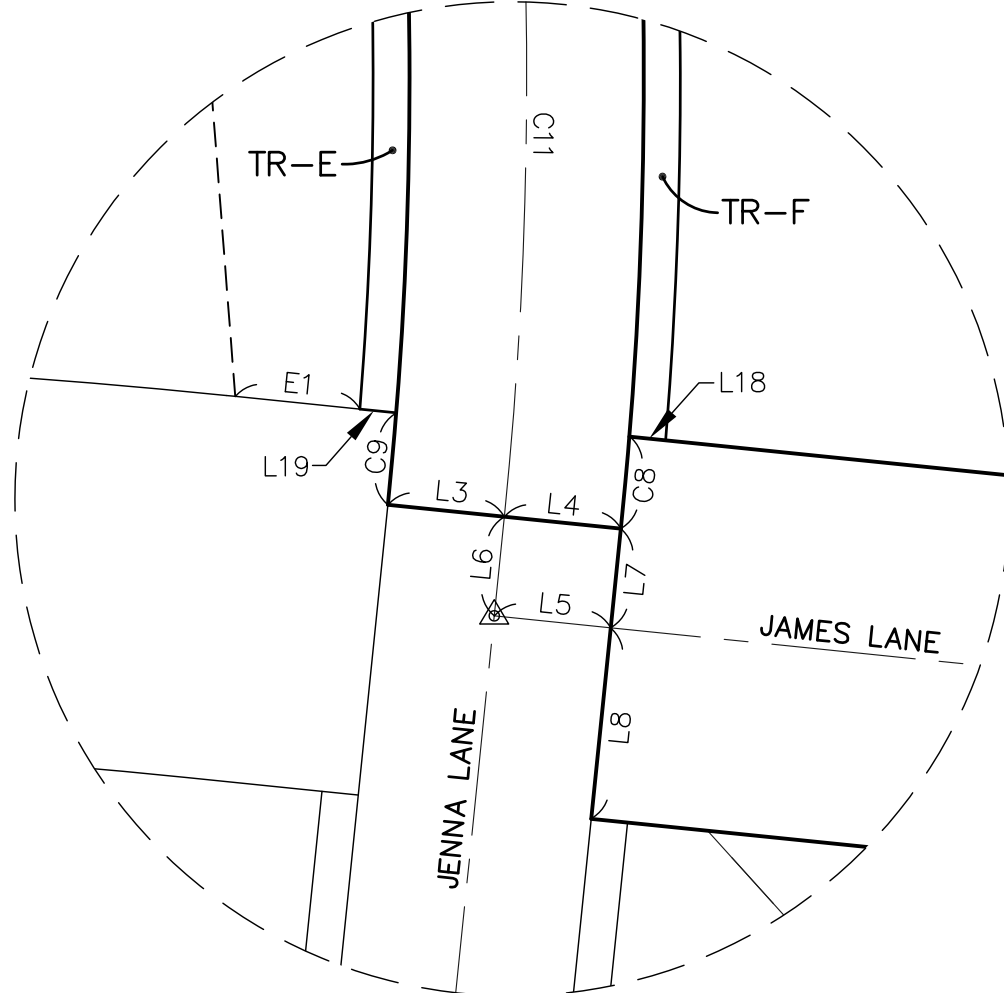


LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°34'01"E	30.50'
L2	N00°34'01"E	30.50'
L3	S84°10'18"E	30.50'
L4	S84°10'18"E	30.50'
L5	S84°10'18"E	30.50'
L6	S05°49'42"W	25.95'
L7	S05°49'42"W	25.95'
L8	S05°49'42"W	50.00'
L9	S00°13'42"W	50.00'
L10	S00°13'42"W	50.00'
L11	S89°39'34"W	33.93'
L12	N78°04'10"E	51.25'
L13	S13°16'51"E	89.48'
L14	S80°23'37"W	55.18'
L15	N85°52'01"E	27.39'

LINE TABLE		
LINE	BEARING	DISTANCE
L16	S00°00'00"E	54.45'
L17	S86°33'25"W	23.79'
L18	N84°10'18"W	9.50'
L19	N84°10'18"W	9.50'
L20	S85°11'40"W	63.20'
L21	N03°40'19"W	135.06'
L22	N66°02'44"E	55.58'
L23	S37°59'42"W	49.14'
L24	N52°00'18"W	41.50'
L25	N37°59'42"E	44.86'
L26	N00°34'01"E	9.50'
L27	N89°47'16"E	130.84'
L28	N89°47'16"E	130.07'
L29	N89°47'16"E	130.45'

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
C1	1215.00'	942.60'	44°27'00"	S48°38'25"E	919.14'
C2	1165.00'	310.24'	15°15'29"	S20°32'36"E	309.33'
C3	1165.00'	71.29'	03°30'22"	S06°52'11"E	71.28'
C4	1165.00'	144.46'	07°06'18"	S01°05'35"W	144.37'
C5	1085.00'	157.32'	08°18'27"	N00°24'16"E	157.18'
C6	1085.00'	850.80'	44°55'42"	N34°19'29"W	829.17'
C7	1085.00'	593.65'	31°20'56"	N74°39'59"W	586.27'
C8	1155.50'	24.05'	01°11'33"	S05°13'55"W	24.05'
C9	1094.50'	24.05'	01°15'32"	N05°11'55"E	24.05'
C10	1155.50'	1896.87'	94°03'24"	S42°23'33"E	1690.94'
C11	1125.00'	1888.27'	96°10'08"	S42°15'22"E	1674.29'
C12	1094.50'	1813.03'	94°54'35"	S42°53'08"E	1612.74'
C13	1450.00'	286.04'	11°18'09"	S89°49'23"E	285.57'
C14	1549.04'	142.27'	05°15'44"	N87°09'24"E	142.22'
C15	1449.04'	133.08'	05°15'44"	S87°09'24"W	133.03'
C16	1550.00'	305.76'	11°18'09"	S89°49'23"E	305.27'
C17	1500.00'	295.90'	11°18'09"	S89°49'23"E	295.42'
C18	1499.04'	137.67'	05°15'44"	N87°09'24"E	137.63'

SEE SHEET 3 FOR
EASEMENT DIMENSIONS (TYP)

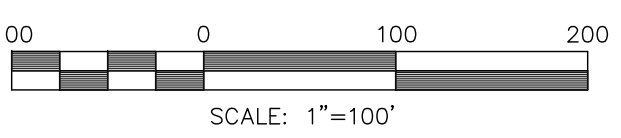
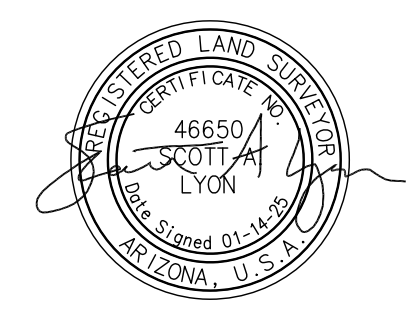


DETAIL "A"
SCALE: 1"=50'

SEE DETAIL A

ROW DEDICATION AND TRACTS
INST# 2023-0050685, YCRO

RIGHT OF WAY
DEDICATED THIS PLAT



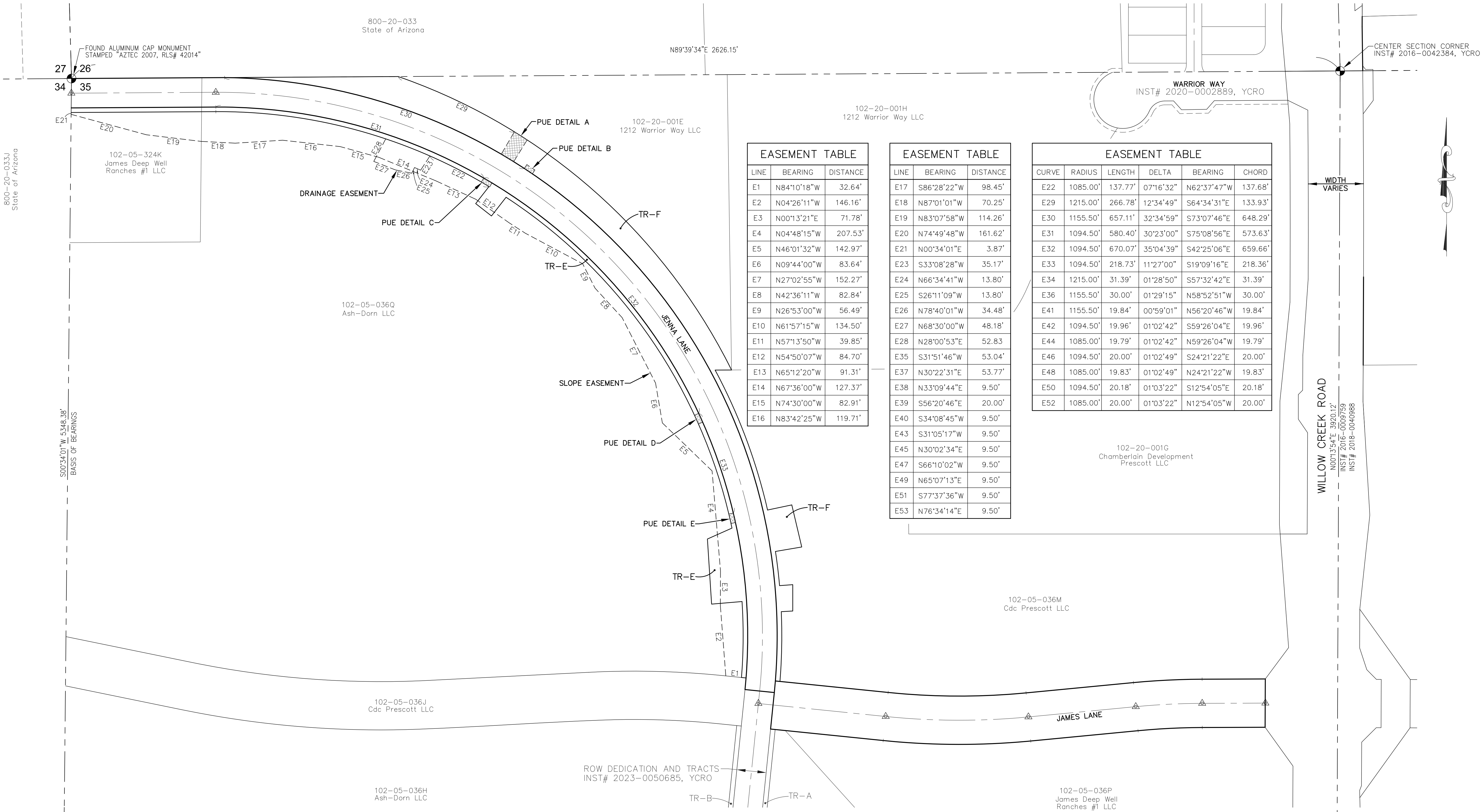


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SHEET 2 OF 3	

MAP OF DEDICATION
EASEMENTS

LOCATED IN SECTION 35
TOWNSHIP 15 NORTH, RANGE 2 WEST
OF THE G&SRB&M, YAVAPAI COUNTY, ARIZONA



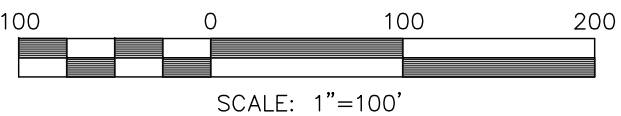
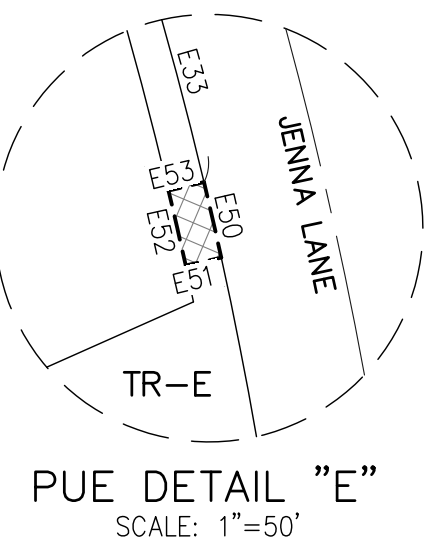
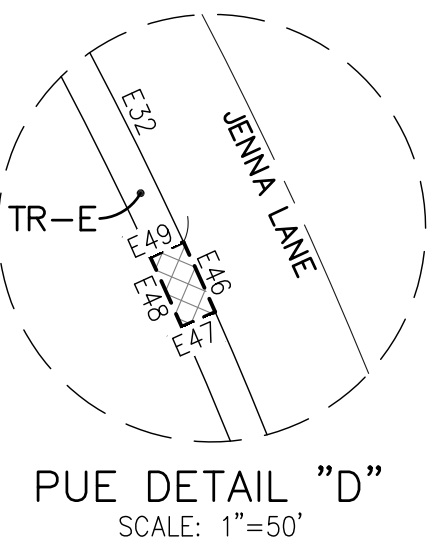
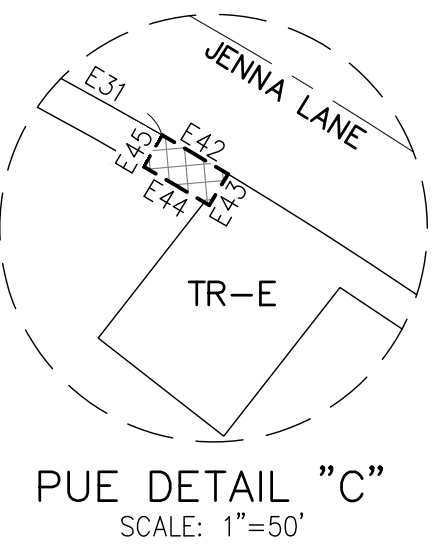
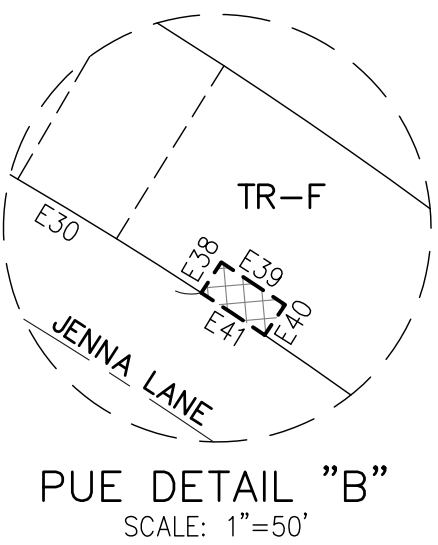
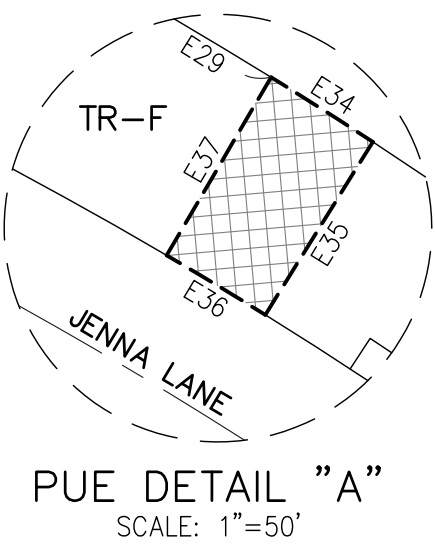
EASEMENT TABLE		
LINE	BEARING	DISTANCE
E1	N84°10'18"W	32.64'
E2	N04°26'11"W	146.16'
E3	N00°13'21"E	71.78'
E4	N04°48'15"W	207.53'
E5	N46°01'32"W	142.97'
E6	N09°44'00"W	83.64'
E7	N27°02'55"W	152.27'
E8	N42°36'11"W	82.84'
E9	N26°53'00"W	56.49'
E10	N61°57'15"W	134.50'
E11	N57°13'50"W	39.85'
E12	N54°50'07"W	84.70'
E13	N65°12'20"W	91.31'
E14	N67°36'00"W	127.37'
E15	N74°30'00"W	82.91'
E16	N83°42'25"W	119.71'

EASEMENT TABLE		
LINE	BEARING	DISTANCE
E17	S86°28'22"W	98.45'
E18	N87°01'01"W	70.25'
E19	N83°07'58"W	114.26'
E20	N74°49'48"W	161.62'
E21	N00°34'01"E	3.87'
E23	S33°08'28"W	35.17'
E24	N66°34'41"W	13.80'
E25	S26°11'09"W	13.80'
E26	N78°40'01"W	34.48'
E27	N68°30'00"W	48.18'
E28	N28°00'53"E	52.83'
E35	S31°51'46"W	53.04'
E37	N30°22'31"E	53.77'
E38	N33°09'44"E	9.50'
E39	S56°20'46"E	20.00'
E40	S34°08'45"W	9.50'
E43	S31°05'17"W	9.50'
E45	N30°02'34"E	9.50'
E47	S66°10'02"W	9.50'
E49	N65°07'13"E	9.50'
E51	S77°37'36"W	9.50'
E53	N76°34'14"E	9.50'

EASEMENT TABLE					
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
E22	1085.00'	137.77'	07°16'32"	N62°37'47"W	137.68'
E29	1215.00'	266.78'	12°34'49"	S64°34'31"E	133.93'
E30	1155.50'	657.11'	32°34'59"	S73°07'46"E	648.29'
E31	1094.50'	580.40'	30°23'00"	S75°08'56"E	573.63'
E32	1094.50'	670.07'	35°04'39"	S42°25'06"E	659.66'
E33	1094.50'	218.73'	11°27'00"	S19°09'16"E	218.36'
E34	1215.00'	31.39'	01°28'50"	S57°32'42"E	31.39'
E36	1155.50'	30.00'	01°29'15"	N58°52'51"W	30.00'
E41	1155.50'	19.84'	00°59'01"	N56°20'46"W	19.84'
E42	1094.50'	19.96'	01°02'42"	S59°26'04"E	19.96'
E44	1085.00'	19.79'	01°02'42"	N59°26'04"W	19.79'
E46	1094.50'	20.00'	01°02'49"	S24°21'22"E	20.00'
E48	1085.00'	19.83'	01°02'49"	N24°21'22"W	19.83'
E50	1094.50'	20.18'	01°03'22"	S12°54'05"E	20.18'
E52	1085.00'	20.00'	01°03'22"	N12°54'05"W	20.00'

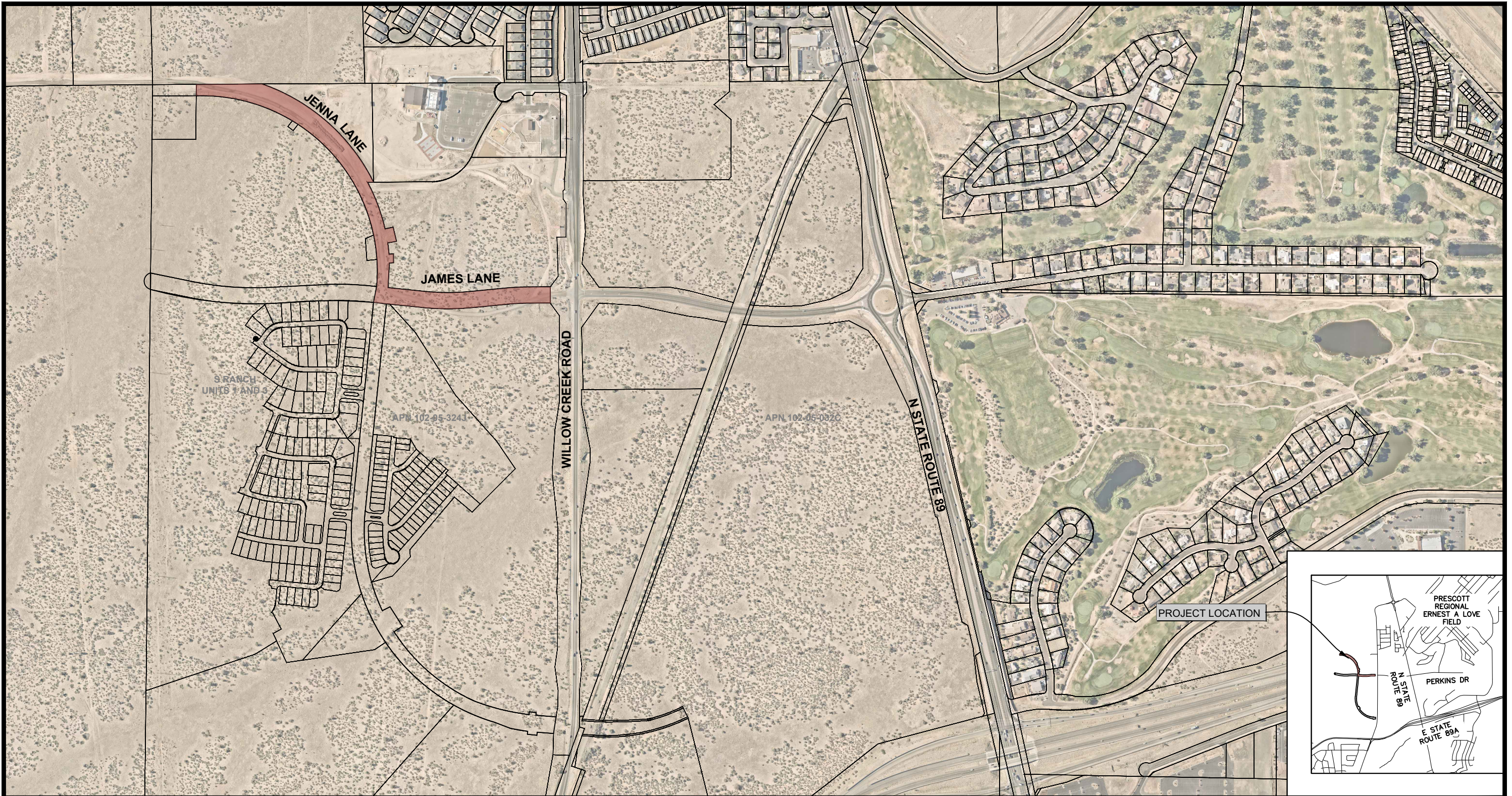
102-20-001G
Chamberlain Development
Prescott LLC

34 35
3 2
FOUND BRASS CAP
RLS# 2398
C.O.P. COORDINATE
N 619634.60
E 610131.93



1650 Willow Creek Road
Prescott, AZ 86301
(928) 776-1750
www.LyonEngineering.com
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DATE: 01-14-25	DRAWN BY: RJW
JOB NO: 903-56	CHECKED BY: DS
SHEET 3 OF 3	



VICINITY MAP
JENNA LANE AND JAMES LANE

This map is a product of
The City of Prescott



NOT TO SCALE

The City of Prescott cannot guarantee the accuracy of the information contained in this map. Each user of this map is responsible for determining its suitability for his or her intended use or purpose.



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 8.I
SUBJECT: Approval of City Contract No. 2025-131 with Balar Equipment for the Purchase of One (1) Titan Vacuum Truck in the Amount of \$755,813.21. Funding is Budgeted & Available in the Wastewater Fund.

ITEM SUMMARY

This item is for the approval of City Contract No. 2025-131 with Balar Equipment for the purchase of a Titan Vacuum Truck allocating FY26 funds in the amount of \$755,813.21.

BACKGROUND

Replacement of this equipment is scheduled in FY26. In preparation for upcoming FY26 budget discussions, staff requested an updated quote for the replacement truck. During these discussions, the vendor indicated that before July 2025, prices for the truck will increase by at least \$37,000 and delivery will take a year to 18 months longer however, if the City commits to purchase the specified truck now, the truck will be available within 8 months, approximately Aug/Sept. This will require entering a contract now while funding in FY26 and allow for a savings of both time and money in the transaction.

The current purchase price is \$755,813.21, after July the price will increase to \$792,813,21.

Wastewater Collections uses Vacuum Trucks to maintain and clean the collection system, clear blockages, and assist with excavation to expose pipes and expedite repairs. These trucks are a critical part of wastewater collections operations. They have a useful lifespan of approximately 10 years at which time reliability declines, and costs of operation and downtime increase significantly. In addition, the newer trucks are more efficient, economical and quieter. For those reasons a replacement for the 2014 vacuum truck was identified as a priority for FY26 in the rate and fee study.

The new vacuum truck will replace a 2014 Kenworth, 11 Cubic yard debris container with a 2025 Kenworth, 12 cubic yard debris container including a fuel savings package that decreases fuel use by 44%, reduces the noise level by 8%, and increases horsepower by 20%.

FINANCIAL IMPACT

Funding is planned in FY26 from the Wastewater Fund and supported by the most recent rate study.

RECOMMENDED ACTION

MOVE to approve City Contract No. 2025-131

ATTACHMENTS

1. City Contract No. 2025-131
2. City of Prescott 2025 Purchase



COOPERATIVE AGREEMENT

Between

**The City of Prescott
And
Balar Equipment (Vac-Con)**

For

Purchase of One Titan Combo Unit Vacuum Truck

Contract No: 2025-131

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of January 28, 2025, between the City of Prescott, an Arizona municipal corporation (the "City"), and Balar Equipment (Vac-Con) (the "Vendor").

This Agreement between the City and the Vendor adheres to pricing found in the approved cooperative purchasing contract number (the "Contract") 101221-VAC with Sourcwell. A copy of the cooperative purchasing contract is attached hereto as Exhibit B and incorporated herein by reference.

COMPENSATION: The City shall pay the Vendor an amount not to exceed \$755,813.21 for providing one (1) Titan Combo Unit Vacuum Truck at the unit rate set in the Sourcwell Contract and the Quote attached hereto as Exhibit A.

The City shall pay the Vendor upon delivery and acceptance of the Goods/Services and upon submission and approval of the invoice(s). The invoice(s) shall (i) contain a reference to this Agreement and the Contract and (ii) document the Goods/Services delivered and accepted to date. Additionally, invoices submitted without referencing this Agreement and the Contract will be subject to rejection and may be returned.

Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

City of Prescott
201 N Montezuma Street
Prescott, AZ 86301
contracts@prescott-az.gov

Balar Equipment
11023 N. 22nd Avenue
Phoenix, AZ 85029
mneubauer@balar.com

TERM OF CONTRACT: Per the terms of Contract number 101221-VAC with Sourcewell. This Sourcewell Contract is effective upon the date of the final signature. This Sourcewell Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22 of the Sourcewell Contract. This Sourcewell Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.

This City of Prescott Cooperative contract shall follow the same terms as above.

CONFLICT OF INTEREST: Pursuant to ARS Section 38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting, or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

TERMINATION FOR CONVENIENCE: The City reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the City without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the City. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the City upon demand. The Contractor shall be entitled to receive just and equitable compensation for work completed, and materials accepted before the effective date of the termination.

INSURANCE REQUIREMENTS:

Vendor to provide certificates of insurance evidencing insurance coverage in a sufficient amount to protect against loss.

DATED: _____ day of _____, 20____

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

Balar Equipment

City of Prescott, a municipal corporation:

(Authorized Signature)

Philip R. Goode, Mayor

By: _____
(Printed Name)

Title: _____

Email: _____

ATTEST:

APPROVED AS TO FORM:

Sarah M. Siep, City Clerk

Joseph D. Young, City Attorney

EXHIBIT A
Quote



11023 N 22nd AV
P.O. Box 83118
Phoenix, AZ 85029
602 944 1933

Quote

Quote #: 11112024
Sales Person: Larry Kaufmann
Cell #: 928-668-3338
Email: lkaufmann@balar.com

Customer: City of Prescott
Prepared for: Justin Hill
Phone: 928-777-1421
Email: justin.hill@prescott-az.com

Quantity	Description	Unit Price	Extended Price
1	Titan Combo unit with 12 yd debris body and 1500 gallons of water mounted on Factory Installed Options -10' Aluminum Telescoping boom with strengthened elbow -Front mounted Atriculating boom w/600' hose -80/2000 Giant 7000 pump, jd 4 cyl tier 4 diesel 140HP -6" Knife valve with Center post and Handle -Rear splash guard (2-10 O'clock-tank mounted) -Rear Hydraulic Pump off system, 350 GPM with 20' hose -Centrifugal Compressor Quiet Silence -Rear bumper assembly -Debris Body Power Flush , 8 jets -Winter package -Hose footage counter -Remote grease includes hose reel and boom -LED strobes on bumpers, midbody, Arrow board -Camera package at rear, hose reel, and midship -Remote Control Pendant -Lazy Susan Pipe Rack -1" x 20' Leader hose -Air ride seats -Cone holder -Storage boxes behind cab 16"x42"x96" -White paint with blue striping -Pre-Tank Water filter (Y-type) -Tungsten infused Carbide Boom elbow with 1 year warranty Dealer sourced and installed / Customer requested open sourced goods -2 persons to factory for pre-delivery inspection -Body lift kit to allow minimum of 20" clearance under tanks -Parker Dayco jetting hose in lieu of standard -Pre-wire for 2-way radio and antenna 1 PDI Sourcwell Contract 101221-VAC	\$ 697,850.00	\$ 697,850.00
1	Estimated Freight		\$ -
		Sales Tax:	\$ 57,963.21
		FET:	
		Total:	\$ 755,813.21

Authorized By: _____
Date: _____
P.O. Number: _____

*This quote is good for 15 days. This quote may not include sales tax. This quote may not include Federal Excise Tax. Freight charges are subject to change. This quote is subject to terms included in package. By accepting this quote you are accepting its terms

THANK YOU



TITAN

Upgrade your water and sewer fleet with the premier combination machine offering improved performance, fuel savings, and a reduction in noise pollution.

FEATURES

- 5, 10, 12 and 15-yard debris tank capacities available
- 800, 1,000 and 1,500-gallon water capacities available
- 44% fuel savings
- 43% decrease in vacuum system operating RPM
- 25% increase in airflow
- 20% more horsepower
- 8% decrease in noise pollution
- 5% increase in overall vacuum pressure (lift)

TITAN

Upgrade your water and sewer fleet with the premier combination machine offering improved performance, fuel savings, and a reduction in noise pollution.

WHY TITAN

Our Quiet Drive system limits chassis engine RPM to 1,250.

GM 5.7L engine standard.

Overall length of a single axle unit is 36-ft.

Overall length of a tandem axle unit is 40-ft.

Our scientifically-redesigned intake and fan housing results in a more balanced airflow, decreasing turbulence and allowing for more power, less noise, and more reliability.

Single cyclonic separator is 60% larger than the first generation of the Titan dual cyclones which equals less maintenance and cleaning time and one vacuum breaker door.

Maintains performance in a compact design with a standard 60-in dump height while maintaining an overall height under 12-ft.

Vacuum-driven by the transfer case, eliminating the front driveline.

Auxiliary gas fuel tank below debris tank.

Standard dome door with 4 hydraulic wedge-type locks.



EXHIBIT B
Cooperative Purchasing Contract

**Solicitation Number: RFP #101221****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Vac-Con, Inc., 969 Hall Park Road, Green Cove Springs, FL 32043 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. **Termination.** Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. **REQUIREMENTS.** At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

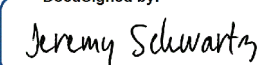
T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

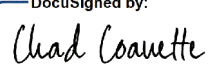
Vac-Con, Inc.

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:51 PM CST

DocuSigned by:

By: C65CBA257A53411...
M.J. DuBois, President, DuCo, LLC
Title: Authorized Contract Administrator
Date: 11/24/2021 | 5:31 AM PST

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 11/24/2021 | 6:46 PM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name: DuCo, LLC
Address: 1079 Tamiami Trl N
#350
Nokomis, Florida 34275
Contact: MJ DUBOIS
Email: mjdubois@ducollc.com
Phone: 410-924-1004
Fax: 410-924-1004
HST#: 81-1963530

Submission Details

Created On: Thursday August 26, 2021 08:52:11
Submitted On: Friday October 01, 2021 11:10:04
Submitted By: MJ DUBOIS
Email: mjdubois@ducollc.com
Transaction #: 0b410897-713e-434f-9209-2bd4698d22a6
Submitter's IP Address: 24.145.112.96

Specifications**Table 1: Proposer Identity & Authorized Representatives**

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Vac-Con, Inc. EIN: 36-3846929	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Vector Technologies LTD	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	N/A	*
4	Proposer Physical Address:	969 Hall Park Road Green Cove Springs, FL 32043	*
5	Proposer website address (or addresses):	www.vac-con.com	*
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	M.J. DuBois, Authorized Contract Administrator - See attached Authorization Letter DuCo, LLC 1079 Tamiami Trl #350 Nokomis, FL 34275 410-924-1004 mjdubois@ducolc.com	*
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	M.J. DuBois, Authorized Contract Administrator DuCo, LLC 1079 Tamiami Trl #350 Nokomis, FL 34275 410-924-1004 mjdubois@ducolc.com	*
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Bryce Reiger, National Sales Manager Vac-Con, Inc. 969 Hall Park Road Green Cove Springs, FL 32043 904-610-6492 brycer@vac-con.com	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
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9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Since 1986, Vac-Con®, Inc. has manufactured more than 9,000 custom-built, truck-mounted machines to serve public and private environmental markets globally. Located in Green Cove Springs, Florida, it is one of the largest producers of specialized vacuum solutions including sewer cleaning , hydro-excavation, and industrial vacuum equipment in North America. Vac-Con's goal, from day one, has been to design and actualize the most powerful and reliable machines in the industry, in turn allowing them to push the envelope year after year with unrivaled innovation. Vac-Con sells multiple product lines, including combination machines, jetting units, and hydro-excavators for a vast array of diverse applications. In 2012, Vac-Con, Inc. acquired Vector Technologies, LTD. Vector Technologies Ltd, located in Milwaukee Wisconsin, is a leading world designer and manufacturer of powerful trailer mounted hydro vacuum excavators, combination vacuum & sewer jetters, and sewer jetting units. For over forty years, Vector designs have set world standards for reliability and performance in a variety of industrial and specialized markets. Vector has provided solutions to organizations of all sizes for an endless number of diverse applications. The purchase of Vector allowed Vac-Con to offer a complete line of innovative, world leading designed sewer, hydro-excavation and vacuum products both truck and trailer mounted. Vac-Con believes in empowering the customer; their mission is to support, design, and manufacture innovative vacuum and high-pressure water cleaning solutions that deliver superior performance in municipal, industrial, and utility markets worldwide. In keeping with their customer-centric philosophy, Vac-Con®, Inc. delivers more than just a product; they provide unparalleled product support with their customer service, online training modules, and extensive network of authorized dealers. Vac-Con®, Inc. employs over 300 people at their Florida location, and 45 employees at their Milwaukee WI location and is 100% employee-owned, enabling a more focused work environment, on-site feedback, and around the clock innovation and testing. Vac-Con's Florida location is situated on 17 acres, it boasts a 160,000 square-foot, newly expanded facility where they manufacture over 30,000 unique parts that they use on our machines. This state-of-the-art facility is a result of Vac-Con® eagerness for continuous improvement and an employee-owner culture centered on advancement through involvement. Mission Statement "Our mission is to support, design, and manufacture innovative vacuum and high-pressure water cleaning solutions that deliver superior performance in municipal, industrial, and utility markets worldwide." Vision Statement "Our vision is to be the premier manufacturer of combination sewer cleaning, hydro-excavation, industrial vacuum, and high-pressure water jetting equipment. We are committed to providing innovative, high-quality products with unrivaled reliability, customer service, and support to dealers and end-users. Sustainable growth and employee-ownership value will be achieved by championing career-building talent and customer-centric initiatives. We will continue to make a positive impact in our local communities and on the environment."	*
10	What are your company's expectations in the event of an award?	As a current Sourcewell contract holder, Vac-Con hopes to continue to build on our past success with the contract and provide exceptional sewer cleaning and hydro-excavation equipment solutions to all prospective members. Vac-Con has developed a strong following with existing Sourcewell Members and Vac-Con expects to build on that momentum adding to your membership with the increased advancement and promotion of additional electronic marketing utilizing our premier partnership with Sourcewell. A newly awarded contract will allow Vac-Con to continue to provide Members with great products at a discounted price to Vac-Con's many existing municipal customers, grow our municipal base and open new opportunities in the educational and non-profit space.	*
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	See the provided attachments, Bank of the West reference letter, D & B credit rating report and Letter of Good Standing.	*
12	What is your US market share for the solutions that you are proposing?	Vac-Con operates in product categories that are sold primarily to the municipal government market segment and to a smaller degree, the commercial market segment. Vac-Con's market share is 29% as we are considered the most innovative, most efficient and have a diverse and comprehensive line of products within our market.	*
13	What is your Canadian market share for the solutions that you are proposing?	Vac-Con's Canadian Market Share is 8%. Vac-Con has signed a new dealer in Canada - Westvac Industrial. Westvac is a leading heavy equipment dealer in western Canada. We are looking forward to the 20+ years experience Westvac has to help grow our market share in British Columbia, Alberta, Saskatchewan, Manitoba and Northwest Territories. Vac-Con has an established dealer located in Quebec who has been active in that market for over 30 years with the Vac-Con product line.	*
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Neither Vac-Con nor Vector has ever petitioned for bankruptcy protection.	*

15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Vac-Con is a manufacturer of a diverse sewer, hydro-excavating, and industrial line of equipment. The complete line of equipment is sold, serviced and supported exclusively through Vac-Con's world-wide individually owned dealer network.
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Florida Department of Highway Safety & Motor Vehicles - Manufacturers License MV/1000409/1 Florida Department of Highway Safety & Motor Vehicles - Dealer License VI/1007965/1 Wisconsin Motor Vehicle Dealer License MV2131
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Neither Vac-Con nor Vector has ever received a suspension or disbarment.

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
18	Describe any relevant industry awards or recognition that your company has received in the past five years	First Coast Manufacturer's Association - 2018 Manufacturer of the Year, 2019 Manufacturer of the Year, 2019 President's Award Best of Clay County - 2019 Best Manufacturing Facility in Clay County Florida, 2020 Best Manufacturing Facility in Clay County Florida, 2021 Best Manufacturing Facility in Clay County Florida National Association of Trailer Manufacturers - Vector manufactured units are NATM certified. National Truck Equipment Association - Most Valuable Partner Award for 5+ years.
19	What percentage of your sales are to the governmental sector in the past three years	Approximately 84% of Vac-Con and Vector sales for the last 5 years have been to the government sector. These customers typically consist of municipalities, townships, counties, and states.
20	What percentage of your sales are to the education sector in the past three years	Less than 3% of Vac-Con and Vector sales for the last five years have been to the education sector. Vac-Con has increased this number due to the previous Sourcewell Contract held. Vac-Con looks to, once again, increase this percentage with the next proposed contract award.
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	HGAC Contract total sales for the last three years is \$4.1 million. Ohio STS Contract total sales for the last three years is \$1.8 million. Texas Buyboard Contract total sales for the last year held is \$400K (only held this year) Florida Sheriff's Contract total sales for the last year held is \$200K (only held this year)
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Vac-Con does not hold any GSA contracts or Standing Offers and Supply Arrangements.

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *
City of Lodi 1331 South Ham Lane Lodi, California	Andrew Richle Utilities Superintendent See attached Testimonial	209-269-4927 arichle@lodi.gov
Delaware DOT P.O. Box 698 Dover, DE 19903	Lawrence Hardy See attached Testimonial	302-760-2505 lawrence.hardy@delaware.gov
Village of Tarrytown 4 Division St. Tarrytown, NY 10591	Louis Martirano Superintendent Of Public Works See attached Testimonial	914-862-1819 dpw@tearrytowngov.com

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Sacramento Area Sewer District	Government	California - CA	Sewer Utility Equipment	10 units	\$3,400,000.00	*
City of San Francisco	Government	California - CA	Water & Sewer Utility Equipment	6 units	\$2,800,000.00	*
Miami-Dade County	Government	Florida - FL	Water & Sewer Utility Equipment	7 units	\$2,900,000.00	*
City of Phoenix	Government	Arizona - AZ	Sewer Utility Equipment	11 units	\$2,600,000.00	*
City of Sacramento	Government	California - CA	Sewer Equipment	9 units	\$3,860,000.00	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	Vac-Con customers are supported by internal teams fulfilling sales, parts and service needs, and distributes through a worldwide network of exclusive dealers. Vac-Con's internal teams function as support systems for our dealer network providing demonstrations, training, troubleshooting and order fulfillment. All Vac-Con sales, parts and service representatives are employee-owners of Vac-Con, Inc. Vac-Con's dealer network functions as the outward facing sales arm of the Vac-Con business. Their dealers are contractually exclusive Vac-Con distributors and are trained in the selling, servicing and maintenance of Vac-Con equipment. Each dealer is required to fulfill specific facility and department (service, sales, parts and marketing) requirements to ensure exceptional customer service. Vac-Con's internal sales team consists of: National Sales Manager, Sales Administrator Supervisor, Sales Administrative Support, Inside Sales Manager, Chassis Sales/Logistic Specialist, Marketing Manager, Multimedia/Graphics Marketing Specialist. Internal Sales Support: South Regional Sales Manager, Northeast Regional Sales Manager, Southwest Regional Sales Manager, West Regional Sales Manager, two product demonstrators and a Recycler Product Specialist	*
26	Dealer network or other distribution methods.	Vac-Con's dealer network functions as the outward facing sales arm of the Vac-Con business. Their dealers are contractually exclusive Vac-Con distributors and are trained in the selling, servicing and maintenance of Vac-Con equipment. Each dealer is required to fulfill specific facility and department (service, sales, parts and marketing) requirements to ensure exceptional customer service. See attached detailed Dealer Network Map and Dealer Location Chart	*
27	Service force.	Vac-Con and Vector maintain teams of trained service and parts departments at the headquarters in Green Cove Springs, Florida and Milwaukee, Wisconsin. Vac-Con and Vector combined employ 6 regional sales managers, 4 product specialists/demonstrators, and 7 service office staff to provide service support to North America. The Vac-Con and Vector direct service team is comprised of 7 service technicians, while the parts and shipping department employs 12 representatives to fulfill parts orders to all dealers. Vac-Con's dealer network provides coverage to all 50 states with 35 exclusive dealerships. Each dealership has a team of service representation and office support to facilitate and process service and parts to end-users. In addition to factory-provided support, Vac-Con dealers are required to maintain service and repair facilities. Dealer parts departments are expected to maintain an inventory of parts for timely fulfillment. Depending on the territory and dealer size, dealers employ between 2 to 15 associates for each department – sales, service, and parts. See the attached dealer listing with the amount of direct service techs at each location.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	The Member or dealer will contact a DuCo team member (Contract Administrator) for initial information, contract questions and quotations. DuCo will provide the customer/dealer with a quotation meeting the Sourcewell Contract requirements, terms, and conditions. The member will issue a Purchase Order directly to Vac-Con. Vac-Con will build the customer equipment, will ship the order to the local dealer for pre-delivery inspection and test. The local dealer will then deliver the unit, train the Member personnel and Vac-Con will invoice the item/s to the Member. The dealer will receive the proceeds of the sale in their respective territory. This will encourage their contract participation. In the case where a dealer owns a stock unit that is to be sold to the member, MJ DuBois will provide the Member a letter authorizing the dealer to receive the Purchase Order directly. This will allow accuracy in the required sales reporting when a dealer receives a PO directly. MJ DuBois and her DuCo team will be the single source "quarterback" for the Sourcewell Contract sales and will also report the sales to Sourcewell as required.	*

29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Any Sourcewell Member having need for customer service is encouraged to communicate directly with their local dealer. Vac-Con dealers are required to maintain an inventory of parts to quickly service customer needs. Vac-Con also requires dealers to have factory trained service staff to handle the customer's service needs. Vac-Con expects our dealer partners to address warranty, service, and parts issues immediately, ensuring a corrective response or action within 12 to 24 hours. Vac-Con service teams are available 24/7 to assist with troubleshooting and repair needs with a case closure goal of 5 days or less for those instances that require intervention from the factory.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	A critical part of the Vac-Con mission is to provide innovative vacuum and high-pressure water cleaning solutions that deliver superior performance in municipal markets. As a US manufacturer with the vast majority of Vac-Con sales are generated from municipal customers in the United States, Vac-Con is committed to providing products, service, and parts to this specific market segment. The exclusive dealer network will help them to facilitate the necessary steps and procedures to procure and fulfill orders and provide service and parts support in each of their designated territories.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Vac-Con is committed to designing, supporting, and manufacturing innovative and reliable products for their customers across the world. With two highly capable dealerships providing coverage to the customers of Canada, as well as Vac-Con's existing presence and relationships, Vac-Con is confident in producing sales and support for this market. Two dedicated regional sales managers employed by Vac-Con provide additional support for all sales, service, and parts functions in the Canadian territories, in addition to the company support provided by the inside sales office at Vac-Con.	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Vac-Con does not expect difficulties in providing exceptional levels of sales and service in any geographic areas of the US or Canada.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Vac-Con expects to fully service all entity sectors that Sourcewell Members represent.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There will be no restrictions in sales, service and support to Hawaii, Alaska and in US Territories other than the expense and time allowance for shipping. All quotations will show the extra costs involved prior to a Member issuing a Purchase Order so there are no surprise fees after the sales.	*

Table 7: Marketing Plan

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Vac-Con will train all their internal and dealers' sales force with the assistance of the DuCo team, Contract Administrator, and make use of Sourcewell's available employees and extensive collection of vendor support materials. This will be accomplished both by group sales meetings and one-on-one virtual meetings. DuCo has been training dealerships and manufacturers in marketing and sales of Sourcewell Contracts for over 13 years with an abundance of success with many manufacturers. Vac-Con takes an aggressive approach to marketing Sourcewell. Vac-Con includes the Sourcewell Logos in their product brochures (see attached example) and on their website (see attached screen shot) that links to Vac-Con's Sourcewell Contract landing page. Vac-Con wants their customers to immediately know that they are a proud holder of this exclusive contract and that they can take advantage of this contract whether they are already a member or would like to become a member. Vac-Con will also include Sourcewell graphics banners at trade shows to further market their participation. To further ensure that Vac-Con is fully marketing the value of Sourcewell, they encourage Vac-Con salespeople and their dealer sales representatives to attend regional Sourcewell training sessions as well as utilize the assigned Vendor Support Manager to assist in answering questions for Members interested in learning more about the value of the Sourcewell procurement process.
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Vac-Con has a comprehensive digital marketing strategy that engages and interacts with dealers, current customers, and potential customers. The goal of Vac-Con's digital marketing initiatives is to drive brand awareness and generate leads, as well as increase traffic to their website. Currently, Vac-Con markets through various social media platforms including Facebook, LinkedIn, and Instagram. Vac-Con's most comprehensive digital marketing strategy is their LinkedIn program. In addition to distributing relevant, engaging content on a consistent basis, they utilize a digital marketing agency to help them reach hundreds of decision makers at municipalities, counties, and government agencies each week. LinkedIn offers a professional setting where Vac-Con is able to directly communicate with decision-makers and promote their products in a helpful and tactful manner. Vac-Con utilizes a digital marketing agency to assist with a comprehensive SEO program. Their SEO program targets industry keywords to help drive traffic to their websites. Vac-Con's focus remains on their product categories and specific applications such as combination machines, hydro-vacs, sewer cleaning, and hydro-excavation. Vac-Con measures their success with the SEO program through annual website traffic increases and qualified leads generated through the website and web-based applications. Year-over-year, Vac-Con has exceeded their SEO goals and continue to evolve the program to increase our reach. Vac-Con actively distributes communications through an email marketing program. The Vac-Con email marketing program is managed by the internal marketing team and reaches over 2,000 dealers and customers. Communications are scheduled on a monthly basis, and consist of new product, program and company updates. Vac-Con measures the success of email marketing campaigns by open and click-through rates and qualified leads generated. Vac-Con continues to add new recipients in both dealer and end-user categories each month through various platforms including the website, social media, and in-person events.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	The Sourcewell marketing model has been an effective and impactful strategy for the Vac-Con business, and is proven by the growth of Sourcewell Contract Sales over the years. Vac-Con representation has made it a priority to collaborate with the Sourcewell employees that facilitate their existing contract. The priority of Vac-Con to ensure longevity and success is service-related, and the Sourcewell team understands this strategy. Vac-Con expects Sourcewell to continue with a presence at trade shows, Getting to Know You events, and Sourcewell University events. Sourcewell has stepped up to the plate in planning education and information Webinars when travel has not been available. Vac-Con is firmly committed to the Sourcewell contract buying concept and agree that it is the way of the future. Vac-Con has created a session at their National Dealer Meetings dedicated solely to Sourcewell sales education and training. These sessions include how to properly sell using the Sourcewell contract, question and answer periods, and testimonials from dealers who have had great success. Vac-Con has utilized the flexibility that Sourcewell contracts offer, and it has become common knowledge for most of the manufacturer' dealers to lead the buying process with this contract. Vac-Con has sent senior management representatives annually to the H2O Conference. Vac-Con has also agreed to subsidize the contract fees to make the Sourcewell contract even more attractive to their respective dealer sales forces. Vac-Con's Contract sales have grown over the years, and this is a testament of Sourcewell and Vac-Con's commitment to the same goal "to offer the best products, service and quantity discounts in support of our customers/members."
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	The products represented in this response do not lend themselves to E-Procurement. All of the products are "made to order" and have an extreme amount of variables.

Table 8: Value-Added Attributes

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Vac-Con offers several training components, free of charge, to assist operators with a better understanding of their equipment for operations and maintenance. An online training portal hosted on the Vac-Con website provides a basic overview of truck models and their functions. Student comprehension is proven by quizzes at the end of each course. Once a student has successfully completed a course, Vac-Con distributes a certificate of completion. Customer service, parts, sales and marketing departments were involved in making the portal informative and thorough. This online training is complete with online videos that guide the course curriculum and user experience. In addition to online training, Vac-Con dealers are equipped to provide hands-on-training at the in-service of the unit and beyond. All new unit deliveries are made available with hands-on training. Additional training needs can be scheduled with the dealership.

40	Describe any technological advances that your proposed products or services offer.	Aeroboost with Quiet Drive – The Vac-Con Aeroboost 3-stage fan (patent pending) with Quiet Drive fan system is a one-of-a-kind upgrade hydrostatic and auxiliary drive system that operates the vacuum and water functions, lowers noise emissions, and substantially reduces overall fuel consumption without sacrificing power. The Aeroboost fan itself better balances airflow, resulting in less turbulence and more power. Titan – The Vac-Con Titan Combination Machine is a premium unit that boasts several impressive features and components offered only by Vac-Con. The Aeroboost Fan and Quiet Drive system enhance power by reducing airflow turbulence, noise emissions, and fuel consumption. An enhanced cyclonic separator optimizes efficiency and filtration, while the Omnibus Precision Power CANbus system enhances usability and efficiency. Omnibus Precision Power – The OPP system by Vac-Con is a CANbus system designed to enhance operator usability and efficiency. OPP gives the operator control over all vacuum, water, and engine functions at a centralized control panel where the operator spend the most time – at the front of the unit. This coordination of systems allows you to use as much power as is needed, saving time and fuel while delivering precise movements of the hydraulic components. ReelSmart Hose Control System: The ReelSmart technology brings hose reel automation to Vac-Con sewer cleaners with a computerized command controller, up to 30 jobs can be recorded and stored for future use. The pay-out footage, job locations and special instructions can be recalled and used for later use. ReelSmart handles all hose reel pay-out and roll in functions, automatically. This means less physical work for the operator and more efficiency and productivity at the job-site. The customer can record on a USB drive or maintain a daily log with its MS-Excel data dump. This new technology is available in English, Spanish and French.	*
41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Vac-Con manufacturing focuses on waste and environmental protection regulations in their day-to-day processes. Pursuant to the Department of Environmental Protection, Vac-Con is listed as a Low Quantity Waste Generator which is an ongoing key result area for the company. Vac-Con implements a full campus recycling program for cardboard and scrap metal. In addition, paint waste is minimized through a distillation process that allows the company to remain a Low Quantity Waste Generator. Vac-Con products themselves are designed to be a proponent of environmental protection and maintenance. Their machines ensure that proper sanitation and hygiene standards are met in communities across the world. The Titan combination machine class also boasts impressive reductions such as 44% fuel savings and 8% decrease in noise pollution as compared to other combination machines. The Vac-Con Recycler combination machine allows for a substantial savings in water usage, decreasing the use of freshwater by approximately 73% or more based on average unit operations.	*
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	John Deere performance certification 1/19/2018 see attached John Deere performance certification 11/4/2016 see attached TigerFlex hose manufacturing Certification SAE J516 Standards	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Most of the local dealers that will be involved in this process are SBE, MBE, WMBE or Veteran owned businesses. The actual participation of each will be dictated by the customer's delivery area. That actual percentage of SBE, MBE, WMBE or Veteran owned business information will be provided to the customer upon request prior to the order being placed. Vac-Con is also utilizing a Small Woman Owned Business, DuCo, LLC, to administer any awarded Sourcewell Contract. Vac-Con is committed to hiring Veterans and Persons with disabilities in their hiring practices. Vac-Con has many veterans currently employed. Vac-Con partners with Veteran organizations as well as the Florida Department of Rehabilitative Services when recruiting for all positions.	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	As a company, Vac-Con is 100% employee-owned through an ESOP facilitated by their parent company, Holden Industries, Inc. This unique characteristic of ownership allows for every employee to have a significant impact on daily operations, product development, and company value. Vac-Con employee/owners are driven to provide the best solutions in the industry as their reputation and ownership relies on it, unlike competitors that are publicly traded or privately owned. Aeroboost – The Aeroboost 3-Stage Fan (patent pending) and Quiet Drive system is the most unique and impressive fan system on the market. Vac-Con has always been a champion of fan systems and is renowned in the industry for their ability to design and manufacture the most powerful and effective fans available. The Aeroboost is their most engineered fan that boasts 44% fuel savings, 43% decrease in vacuum system operating RPM, 25% increase in airflow, 16-30% more horsepower, 8% decrease in noise pollution, and 5% increase in overall vacuum pressure. Titan – the Titan combination machine is the new standard in combination units and boasts impressive, Vac-Con exclusive components such as the Aeroboost fan and quiet drive system, upgraded filtration, and the Omnibus Precision Power control system. Comprehensive Portfolio – A unique feature that sets Vac-Con apart is that they offer a comprehensive portfolio in combination, hydro-excavation, and jetting machines. Their units are available as skid, trailer, and truck-mounted configurations with various optional components to build these systems out to fit any customer application. Vac-Con is considered to be a custom-manufacturer, allowing each unit to be configured to meet the customer's needs best. Dual Engine – Vac-Con is the only manufacturer to offer a dual engine combination machine. The dual engine machine makes cleaning sewers a simplified process, while offering reliability and safety. The 2-engine design provides independent control of the vacuum and water systems. This efficient design allows the chassis engine to drive the 3-stage fan or positive displacement blower vacuum system, saving fuel and general wear and tear in the long run.	*

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Each new Vac-Con unit is backed by a factory warranty for defects and workmanship for one year. Longer factory warranty periods are in place for fans, auxiliary engine water pump drive components, debris tank, and water tanks. These warranties cover all products, parts and labor for maternal defect and workmanship. Extended multiple year warranties are available to purchase at a "pass through" price for these OEM components when the original purchase of the machine is made.	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	There are no usage restrictions imposed by Vac-Con. The warranties are based on time from acceptance by the customer and not hours of use of components.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	The warranty coverage will be reviewed on a case by case basis with the customer's local dealer. Travel time and mileage may be considered to be covered under warranty under extreme circumstances. Typically the customer would take their unit in to the local dealer to perform warranty repairs.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	There are no geographic locations that can not be served. The exclusive Vac-Con dealerships and vendor facilities will assist with maintenance and service required of all Vac-Con units within their sales territories. Vac-Con is capable of providing technical support and parts to customers directly if their dealer is beyond their "reach". This type of warranty support must be factory authorized prior to work on the unit. The customer would simply call a Vac-Con Warranty Specialist, communicate the issue of concern and receive a written Statement of Warranty Work, return any defective parts required to be returned and can be issued a labor credit at the current dealer warranty labor rate that they may use to purchase replacement parts in the future.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Purchased components will be covered by the warranty applicable by the Original Equipment Manufacturer of that component. Vac-Con will assist with coordinating with these entities to service a unit, but the following items would be eligible for their own OEM warranty: Auxiliary engines, water pumps, positive displacement blowers, chassis components and engines. Vac-Con's OEM partners have dealer representatives throughout the United States and Canada. Examples of these OEM's are: John Deere, Kubota, Freightliner etc.	*
50	What are your proposed exchange and return programs and policies?	Because each unit is built to order, there is no set exchange or return policy.	*
51	Describe any service contract options for the items included in your proposal.	Customers that outsource their warranty, service or repair work on their equipment may contact the local servicing dealer. Each dealer is independently owned and employs dedicated parts and service personnel. Vac-Con's dealers have been specifically chosen to represent their products based on their sustained financial stability, ability to provide superior product support both before and after the sale. It is important to Vac-Con that all of their dealers have developed a strong trust and commitment with their local customers. All Vac-Con dealers have their own in-house maintenance facilities along with road-side mobile service repair. Each local dealer will have the capability to provide service contracts and do so regularly. These service contracts are dictated by case by case customer relationships. Vac-Con does not offer service contract options directly to their end users. Vac-Con offers extended warranties and offers pass-through extended warranties on chassis.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
52	Describe any performance standards or guarantees that apply to your services	Vac-Con guarantees all product warranties ensuring component workmanship and durability. These warranties can be found in the warranties section of the units manual. All Vac-Con units undergo a thorough factory inspection, and unit burn-in prior to delivery to the dealer and end-user. This process ensures accurate operations of each component and system as specified by the order build sheet. All Vac-Con units are built with the best products available including outsourced components that are sourced through a selective purchasing process by expert purchasing, engineering, and production teams. Each Vac-Con unit is guaranteed to meet customer specified requirements regarding vacuum capabilities, water systems, capacity, weight, and dimensions. Vac-Con provides 24-hour technical service support through their factory service team. All Vac-Con units are guaranteed support by both local Vac-Con representation and the factory service team. Service inquiries will receive a response within 12 to 24 hours of first contact either by local representation (dealer) or a Vac-Con representative. In-stock parts are guaranteed to ship within 48 hours of order submittal.
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	One-Touch Customer Support backs Every Vac-Con® Vac-Con®'s part tracking software ensures that they have in inventory all the parts customers and dealers need when they need them. Vac-Con has a dedicated service facility for all warranty work, local repairs, and refurbishing work. One-Touch Customer Support gives you: 26,000 square foot service department, Training center with expert instructors, 24/7 real person support help line, Over \$5 million in parts inventory, and 24-hour parts shipment turnaround. Vac-Con's customers can expect to receive either dealer or in house service contact within 24 hours of notice. Vac-Con has a commitment to service with quality after the initial sale and including any followup sales. Vac-Con's repeat customers speak to their service/performance standards as 85% of their sales are repeat customers.

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *
54	Describe your payment terms and accepted payment methods?	Payment terms are net 30 days unless otherwise arranged prior to purchase on a case-by case basis.
55	Describe any leasing or financing options available for use by educational or governmental entities.	Vac-Con does utilize municipal and non-profit leasing through third party vendors if there is Member interest. Vac-Con does not quote rates or terms for leasing, however it should be known to Members that we have this service available to them. Vac-Con will work with other Sourcewell Awarded Vendors, such as NCL, or any leasing agency of the Member's choice.
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Vac-Con will use a standard quote document to price each item for Sourcewell Members. Example attached.
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Vac-Con will not accept the P-card for payment. The typical transaction size does not lend itself to this process. Some Vac-Con dealers will allow parts, service, and dealer inventory to be paid for by P-Cards. Each individual dealer will be receiving payments directly for these items, accepting P-card procurement will be at their discretion. Many dealers do accept this method without additional fees. Some dealers have limitations on the amount that can be processed.

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Vac-Con's offer is a percentage discount from the manufacturer list price to Sourcewell Members on all of the items being proposed in this offer. Vac-Con's discount will be based on a percentage off of the base model unit. Vac-Con mounts most of their units on commercial truck chassis (except for the trailer mounted units). In order to provide the customer with convenience and the best pricing available, Vac-Con will provide the truck chassis with no profit associated or at a pass-through price to the Member. This gives the Member the ability to utilize quantity discounts that are offered by the chassis manufacturers to Vac-Con. Vac-Con purchases "pool truck chassis" at substantial quantity discounts. Vac-Con will also allow the customer to supply their own chassis in which to mount the body.

59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Vac-Con is offering a 10% discount off base units within the following categories: Dual Engine Combination Sewer Cleaners, Single Engine Combination Sewer Cleaners, Dual Titan Sewer Cleaners, Single Titan Sewer Cleaners, XCavator hydro-excavating models, MXT hydro-excavating models, Hydrovac hydro-excavating models, and all refurbishment prices. Vac-Con is offering a 5% discount off base unit for the following models: HotShot sewer jetters, 3 yd sewer combo units, Vac Pumper models, VecJet jetters, Neptune sewer combo unit, Mudslinger hydro-excavation units and VecLoader industrial vacuum trailers. Vac-Con is offering an 5% accessory part discount. To qualify for this discount: 1) The Member is only buying Accessories parts and not an entire unit, 2) The Member Purchase Order must be in excess of \$15,000.00. All Member Purchase Orders that qualify, must have their SW Member Number Clearly stated on the Purchase Order.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	Vac-Con's will offer additional discounts for volume purchases. There will be an additional 3% discount off of the base unit discounted price for a single purchase order for 4 or more units. Vac-Con does not offer any rebate programs at this time.	*
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	It is Vac-Con's intention to cover all items available on our commercial price lists. Vac-Con does realize from time to time there may be individual requirements that will not be listed. Vac-Con will provide any items "specific" to Sourcewell Members needs that we are able to. The pricing for such items will be priced at 20% above cost. Prior to accepting an order with Open Market or Sourced Goods from a Sourcewell Member, Vac-Con will discuss the availability of specific requests and price the item. Any documentation of cost that we can provide for these items will be presented on an individual basis.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	There are several costs not included in the pricing submitted in this proposal. These costs are listed below: Freight and Delivery: Freight costs will be pre-paid and added to the Members Quote and Invoice. Small items will be, in most cases, delivered by UPS. Other freight carriers may be utilized in shipments, i.e. Federal Express, DHL and common carrier for truck freight. The actual cost of shipment will be passed through to the customer. Vac-Con will not mark up this item for profit. Minimal handling fees may be added where special packaging is required. The Member will be notified of these charges if applicable prior to order placement. Federal Excise Tax: Vac-Con is required by law to collect Federal Excise Tax on any truck mounted unit rated above 33,000 GVW. This tax will be added to the customer invoice as a separate line item. Vac-Con will pay this tax directly to the Internal Revenue Service. The rate of tax is calculated at 12%. Most municipal and non-profit entities are exempt from this tax. If an exemption certificate is provided, Vac-Con will not be required to collect this tax. Mounting Fee: Mounting fees cover the cost of the mounting of the body on the desired truck chassis or trailer. Federally Mandated Items: The cost of any federally mandated items will be passed on to the Member. The current pricing includes any federally mandated items that are mandated at the time of this proposal. Should there be a Federal Mandate after the date of this proposal, any cost incurred to meet the requirements of this mandate will be passed on to the member. Any costs applicable will be provided to the Member prior to any Purchase Order being issued. This fee would typically be charged to meet any future EPA standards that may arise. An example of such costs would be in meeting Federal Emission Standards. Local Dealer Pre-Delivery Inspection, On Site Training, and Local Delivery Fees: These costs are charged by local dealers to inspect, test, in service the unit, local extended delivery and follow up training. These costs are a pass through cost to the member from the local dealer.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	All freight charges are pre-paid and added to the Member quotation for convenience. Members always have the choice of picking up the units at the factory or retain a 3rd party of their choice to deliver the equipment. The freight charges Vac-Con charges are at a pass-through price. Vac-Con has negotiated quantity-discounted shipping rates and will pass those discounts on to the Members. Most offered items are custom built to customer specification. Anticipated delivery of items ordered on a stock chassis or customer supplied chassis is expected to be 45-90 days after receipt of order or customer chassis. Anticipated delivery of an item ordered on a "special order" chassis is expected to be 120-180 days after receipt of order; however, this time can vary greatly depending upon chassis manufacturer back log. Delivery of truck mounted units will be pre-paid and added to Member Quotation and Invoice. Both "Drive-A-Way" service and common carrier service will be used. The actual cost of the service will be passed through to the customer.	*

64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	The shipping and delivery charges for Canada, Alaska and Hawaii and any other off shore location are the same as the previously stated delivery programs for the contiguous US. The shipping charges to the port location will be calculated in the same manner. If the customer wishes Vac-Con to deliver via ocean transport, they will pass on the negotiated shipping rates that they will pay to the ocean transport carrier to the Member. It has been Vac-Con's experience that the customers in these locations usually have their own negotiated rates with shipping carriers. If this is the case, Vac-Con will provide the customer shipping to their desired port and provide the customer with the appropriate documentation required. Vac-Con strives to provide the equipment as customer specified and to their satisfaction upon delivery.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	As stated above, Vac-Con does pass on negotiated, competitively bid freight pricing to their customers. Most of Vac-Con's Dealers do have units in stock and Member's can purchase those units to enhance delivery times and in some cases better prices for any previous year's inventory.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Vac-Con fully recognizes the value of the national Soucewell Contract and a such gives the best discounts available to Sourcewell Members

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Due to the unique nature of our proposed contract representation, Vac-Con builds in an automatic audit process. DuCo, LLC, being the proposed Contract Administrator and single source for Sourcewell quotations, allows for this self-audit process. Vac-Con will not have to rely on multiple reports from individual dealerships for an accurate accounting of sales. DuCo will have the ability to account for every sale at time of order. There is no after-the-fact gathering of information. DuCo prepares the quotation for the Member under the Contract guidelines. Every Sourcewell Member quotation delineates the Sourcewell Contract Number. When a Purchase Order is received, Vac-Con will require the Purchase Order to reference the contract number. This process makes it clear for all personnel to recognize that it is a Sourcewell contract sale. The order, when received, is booked and accounted for on the Sourcewell sales spreadsheet. This makes the end of quarter reporting complete at the actual end of quarter. As a secondary check, when Vac-Con receives a payment for a unit, Vac-Con will verify the contract used in its purchase. This ensures the correct accounting for the sale on a second level.	*
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	Vac-Con sales are maintained in a comprehensive CRM (Salesforce) program that allows for the sales and marketing teams to determine how many units are sold through the Sourcewell contract and additional metrics regarding these sales. The Vac-Con sales team will track and report on quarterly sales through the contract to both internal and external sales teams to evaluate performance of both dealers and regional sales representatives. Vac-Con actively promotes the use of the Sourcewell Contract, and awards dealers on an annual basis for their activity with the contract. Vac-Con values the ability to service the Sourcewell Members with their products. In order for them to ensure they are providing a product that Sourcewell Members want, Vac-Con evaluates these sales, quarterly and annually, to ensure growth. Vac-Con will respond accordingly to specific regional performance through dealer training as well as participation in Sourcewell training classes. Vac-Con expects to increase sales each year. Vac-Con operates with an annual marketing plan to ensure that they maximize their outreach to potential customers, including Sourcewell Members in order to achieve their goal.	*
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Vac-Con proposes an administrative fee of 1%. The fee will be calculated on the Member price less Chassis cost, sales tax (if applicable), and dealer prep/delivery fees.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
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70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Vac-Con Combination Jet/Vac Machines Dual and single engine combination machines with a range of offerings including 2 and 3-stage centrifugal compressors (fans) or various positive displacement blowers for vacuuming. Water jet systems ranging from 15 gallons per minute to 120 gallons per minute with pressures ranging from 1500PSI to 4000 PSI. These units are available in a range of sizes with debris tanks from 3 cu/yd to 16 cu/yd and water tanks from 200 gallons to 1500 gallons. Vac-Con has many optional features offered which are patented. Recycler combination machine – This combination machine is up-fitted with a recycler component. The recycler allows for debris tank water to be used in lieu of fresh water, greatly reducing overall water usage. This feature conserves water as a “Green Initiative” primarily and allows users to continue to work in areas where water access is limited or not available. The Vac-Con Recycler machines can function as standard combination machines in addition to utilizing the recycler features. Titan Class combination machines – the Titan combination machines feature the Aeroboost 3-stage fan (PATENTED) and offer users an incredible amount of efficiency. The dual engine Titan configuration results in a 44% fuel savings, 43% decrease in vacuum system operating RPM, 25% increase in airflow, 16-30% more horsepower, 8% decrease in noise pollution, and 5% increase in overall vacuum pressure (lift). These statistics result in a machine that offers high performance while being very environmentally friendly in regard to noise and carbon footprint. Neptune Trailer-Mounted Unit – the Neptune is a combination jet/vac machine that is either trailer or skid mounted. It is offered with either a 535 or 845 gallon debris tank and 225 or 325 gallons of water tank capacity. This unit is a portable and powerful option in a smaller footprint ideal for schools, colleges and small local governments. Vac-Con Jet ONLY Machines VJ375 – a single axle trailer-mounted unit with 375 gallons of water VJ750 – a tandem axle trailer-mounted unit with 750 gallons of water VJT1500 – a truck-mounted, enclosed jetter unit with 1,500 gallons of water Hot Shot – The Hotshot is a truck chassis mounted machine that offers up to 2,500 gallons of water capacity and is ideal for large sewer and pipeline jetting and cleaning. Vac-Con Hydro-Excavation Machines Mudslinger MS – a trailer or skid-mounted hydro-excavation unit available in 535 or 845 gallon debris tank and 225 or 325 gallon water capacity. The Mudslinger MS is built to function as a standalone unit or as a complement to additional excavation equipment. Mudslinger MST – The MST is available on an F650 (26,000lb) or larger chassis and is offered in 535 or 845 gallon debris tank and 225 or 325 gallon water capacity. The MST offers the Mudslinger trailer unit on a convenient small footprint chassis configuration. Mudslinger MXT – The MXT is a simple, chassis-mounted unit that offers the powerful Vac-Con system in an easy-to-use configuration. Mudslinger CXT – The CXT is a chassis-mounted hydro-excavation machine available from 3 to 16 yard debris tank and 800 to 1,300 gallons of water. This is the legacy Vac-Con hydro-excavation machine. Mudslinger EXT – The EXT is offered in a 12 yard debris tank and 1,500 gallons of water. This unit features an enclosed operator station, and insulated water system and components. The EXT is designed for harsh weather and below freezing environment excavation. Vector Industrial Vacuum units Industrial vacuum units – high vacuum, high volume industrial material conveyors offering a wide variety of products suited for heavy duty industrial cleaning and recovery applications. Noted for their simple rugged durability, Vector machines can be found around the world on the job in shipyards, mines, mills, manufacturing plants, oil fields, gas well sites, refineries, rail yards, general construction sites, infrastructure remediation sites, hazardous material recovery and demolition operations, commercial roofing, abrasives and coatings industries, and others. Available in trailer mounted units and skid mounted units. Vacuum Pumper units Truck mounted vacuum units available from 1500 gallon tank capacity to 5000 gallon tank capacity for pumping large quantities of liquid waste. These trucks can be used stand alone or in synchrony with any other Vac-Con vacuuming equipment. Refurbishment Packages Refurbishment packages on several different levels for already owned Vac-Con units. These refurbishment packages, Bronze, Silver, and Gold, can help the customer over-haul their Vac-Con unit when budgets don't permit replacement units. Refurbishments take place at the factory in Green Cove Springs, Florida Accessories, wear parts and supplies - A full catalog of accessories, camera solutions, pumps, nozzles, cutters and common wear items are offered in this response. Dealer stock, demonstrator, and reconditioned units are offered in this response. These items offer solutions for budget challenged members and for those who will need immediate delivery without having to wait for new build lead time.
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71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	The Vac-Con "Vac Pumper" models fit within the grease trap cleaning equipment, portable toilet servicing equipment, Sewage pumping station maintenance equipment. The Vector VecLoader offering fits within Industrial Vacuum Equipment, Hazardous Materials Collection Equipment, HEPA filtration equipment categories.	*
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Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	☒ Yes ☐ No	Models offered in this category: Dual Combo, Single Combo, Dual Titan, Single Titan, 3 yard Combo, Neptune trailer.	*
73	Hydro or air excavation equipment	☒ Yes ☐ No	Models offered in this category: XCavator, MXT (municipal hydro-excavator), Hydrovac (offers air and water excavation), Mudslinger trailer excavator.	*
74	Jetters and rodders	☒ Yes ☐ No	Models offered in this category: HotShot high pressure sewer jet, Vec Jet high pressure sewer trailer.	*
75	Dewatering, mud, trash, and centrifugal pumps	☒ Yes ☐ No	These items are offered within this response.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	☒ Yes ☐ No	Models offered in this category: Vac Pumper	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	☒ Yes ☐ No	All of these items are offered within this response with a 5% discount.	

Table 15: Industry Specific Questions

Line Item	Question	Response *
78	Describe any product or equipment features that improve operator safety.	Operator safety is at the core of Vac-Con products. Vac-Con integrates a range of components and product features that ensure operators can work with and around these machines in the safest possible manner. - Power Level Wind Guide – an automated component that brings jetting hose out of the manhole, limiting the need for an operator to reach in or around the manhole - Outrigger Leg Magnet – A magnetic leg on the hose reel that assists with lifting service access point lids saving possible operator injury lifting heavy objects. - Grate Lifting Hook System – utilizes the boom to remove storm drain gates saving possible operator injury lifting heavy objects. - Wireless Remote with E-Stop – allows for wireless operation of the unit reducing the need for the operator to manually handle equipment. An E-Stop ensures a way to quickly terminate all functions in case of an emergency - Titan Quiet Drive – The Quiet Drive reduces noise pollution by 8%, allowing operators the ability to hear over the machine for directions and warnings - Water Tank Location – lowest center of gravity in the industry preventing truck top-heavy roll-over The operation of Vac-Con units is performed at the front of the unit with hardwired controls or wireless remotes. Operator safety is better secured with the entirety of the truck between the operator and oncoming traffic. The remote transfer case engagement is located at the front hose reel and allows for operators to control functions typically managed inside the cab. This feature is designed to start and stop the engine and engage and disengage the transfer case from the exterior front of the unit. Operator footsteps and movements in and out of the cab are mitigated, reducing the chance of injury. In addition, Allison Auto Neutral and Range Inhibit Functions are used for safety on this component.
79	Describe any product or equipment innovations that increase uptime and operator productivity.	The Vac-Con Recycler is a combination machine outfitted with a recycling component. This system allows for users to use water already in the pipeline or recycled water from the debris tank to continue operations. This function keeps an operator on the job all day without the need to refill tanks running 50 GPM @ 3,000 PSI. The time given back to a job by reducing the need to refill water capacity increase operator efficiency. The Omnibus Precision Power Control System gives the operator control authority over all vacuum, water and engine functions, and at a centralized control panel, right where the operator is working. This coordination of systems allows the operator to use as much power as is needed, saving time and fuel while allowing precise movements of the hydraulic components. This system eliminates over 250 electrical connections and over one mile of wire in a typical Vac-Con build. The Remote Transfer Case Engagement is designed to allow operators to start and stop the engine and disengage the transfer case from the front of the unit. Located on the front hose reel, this feature will limit operator footsteps to and from the cab of the unit and allow a fast job completion. ReelSmart Hose Control System: The ReelSmart technology brings hose reel automation to Vac-Con sewer cleaners. With a computerized command controller, up to 30 jobs can be recorded and stored for future use. The pay-out footage, job locations and special instructions can be recalled used for later use. ReelSmart handles all hose reel pay-out and roll in functions, automatically. This means less physical work for the operator and more efficiency and productivity at the job-site. The customer can record on a USB drive or maintain a daily log with its MS-Excel data dump. This new technology is available in English, Spanish and French.

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - VacCon Sourcewell Pricelist 9_30_2021.zip - Monday September 27, 2021 14:14:14
 - [Financial Strength and Stability](#) - Financial Strength and Authorization Letter.zip - Monday September 27, 2021 14:14:25
 - [Marketing Plan/Samples](#) - dealers and marketing examples.zip - Monday September 27, 2021 14:14:59
 - WMBE/MBE/SBE or Related Certificates (optional)
 - Warranty Information (optional)
 - [Standard Transaction Document Samples](#) - VACCON STANDARD QUOTE EXAMPLE.pdf - Monday September 27, 2021 14:15:19
 - [Upload Additional Document](#) - Performance Certs and Testimonials.zip - Monday September 27, 2021 14:15:36

Addenda, Terms and Conditions**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - M.J. DuBois, Contract Administrator, DuCo, LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	☒	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	☒	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	☒	1



1/22/25

Justin Hill
City of Prescott, AZ
432 N Virginia St
Prescott AZ, 86301

Dear Mr. Hill,

I am writing to inform you that, in anticipation of the approval for the purchase of the Vac-Con Combination Sewer Cleaner, the City of Prescott will not receive delivery or assume ownership of the equipment before July 1, 2025. This timeline also applies to disbursement of funds related to this purchase.

Thank you for your attention to this matter.

Sincerely,

Mike Pellecchia
Regional Sales Manager, West
Vac-Con Inc.
206.713.9106

MORE POWER TO YOU

969 Hall Park Road,
Green Cove Springs, FL 32043
Tel: 904.284.4200 • Fax: 904.284.3305
www.vac-con.com



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: City Manager
ITEM #: 8.J
SUBJECT: Adoption of Resolution No. 2025-1916 Regarding Support of Local Control of Short-Term Rentals.

ITEM SUMMARY

This item is for the adoption of a Resolution to urge the Arizona State Legislature to return control over short-term rentals to local jurisdictions.

BACKGROUND

As of 2024, there are approximately 200 registered short-term rentals (STRs) in Prescott. STRs contribute to our local economy, but they can also put a strain on infrastructure and services; impact the residential character of neighborhoods with overcrowding, noise, and reduced parking; and reduce the availability of long-term housing.

The average household size in Prescott is 1.9 people. The average occupancy of an STR is 7.6 people. With more people also comes more cars on neighborhood roads, more cars parked in the street, more water used for showers and toilets, and more calls for an emergency response. Because people in a short-term rental are often on vacation, STRs can also mean more noise and late night activities even during the week.

STRs reduce the number of homes available for use as a primary residence through purchase or a longer-term rental. This reduction in supply may drive up housing and rental prices, negatively impacting the affordability of housing for workers and further challenging businesses, nonprofits, and municipal services.

If empowered to do so, each community could find solutions to the challenges presented by STRs that best meet the needs of their community. The solutions in Prescott could be different from those pursued in Sedona, Flagstaff, Scottsdale, or Tucson. Unfortunately, Arizona's state preemption laws restrict local governments' ability to regulate STRs and leave municipalities unable to implement tailored solutions.

This resolution encourages the legislature to return local control over short-term rentals so that each community can address the associated challenges in the way that best meets the needs of that community.

FINANCIAL IMPACT

There is no direct financial impact associated with this item.

RECOMMENDED ACTION

MOVE to adopt Resolution No. 2025-1916

ATTACHMENTS

1. Resolution No. 2025-1916

RESOLUTION NO. 2025-1916

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, URGING THE ARIZONA STATE LEGISLATURE TO ADDRESS THE IMPACTS OF SHORT-TERM RENTALS FOR ARIZONA RESIDENTS

WHEREAS, short-term rentals (STRs) have impacted the residential character of neighborhoods in Prescott, Arizona, leading to concerns about overcrowding, excessive noise, reduced parking, and declining availability of long-term housing; and

WHEREAS, the average household size in Prescott is 1.9 persons, yet STRs often house an average occupancy of 7.62 persons, creating a stark disparity and causing undue strain on residential infrastructure and community cohesion; and

WHEREAS, as of 2024, Prescott had approximately 200 registered STRs, with 12% owned by non-residents of Arizona, demonstrating an increasing trend of external ownership that can dilute community engagement; and

WHEREAS, Arizona's state preemption laws limit local governments' ability to regulate STRs, preventing communities like Prescott from addressing the unique challenges STRs pose to housing availability and neighborhood integrity; and

WHEREAS, bipartisan support exists within the Arizona Legislature to return local control over STR regulations, recognizing that each community requires tailored solutions to balance tourism, economic development, and housing preservation;

WHEREAS, local governments are best positioned to consider variables such as housing costs, density, infrastructure, and tourism impact when developing STR regulations to protect neighborhoods and maintain a high quality of life for residents.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. The City of Prescott urges the State Legislature and Governor to return local control over STR regulations, enabling the City to implement reasonable zoning restrictions on the number, location, and operation of STRs.

SECTION 2. The City of Prescott advocates for state legislation allowing municipalities to balance the rights of STR owners with the need to maintain community standards, housing availability, and neighborhood character.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of January, 2025.

PHILIP R. GOODE, Mayor

ATTEST:

APPROVED AS TO FORM:

SARAH M. SIEP, City Clerk

JOSEPH D. YOUNG, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
County of Yavapai) ss.

I, the undersigned, Sarah M. Siep, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Resolution No. 2025-1916 is a true, correct and accurate copy of Resolution No. 2025-1916, passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the 28th day of January, 2025, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 2025.

Seal



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Police
ITEM #: 8.K
SUBJECT: Approval of City Contract No. 2024-054A5 with Courtesy Chevrolet in the Amount of \$58,811.11 for the Purchase of a 2025 Chevrolet Silverado 1500 Crew Cab 4x4, and Approval to Utilize Funding from the Opioid Settlement Grant Fund to Purchase & Install Emergency Equipment in that Vehicle in the Amount of \$13,314.58 from Northern Arizona Upfitters as Well as Move One (1) Full Time Sergeant Assigned to the Narcotics Task Force from the General Fund to the Opioid Settlement Grant Fund.

ITEM SUMMARY

This item is for the approval of City Contract No. 2024-054A5 in the amount of \$58,811.11 for the purchase of a 2025 Chevrolet Silverado 1500 Crew Cab 4x4 from Courtesy Chevrolet and approval to utilize funding from the Opioid Settlement Fund to purchase and install emergency equipment in that vehicle in the amount of \$13,314.58 from Northern Arizona Upfitters as well as move one full time Sergeant assigned to the narcotics task force from General Fund to the Opioid Settlement Fund totaling salary and employee related expenses, currently estimated at \$155,116. per year.

BACKGROUND

In August 2021, the Arizona Attorney General's Office announced that 90 cities and towns and all 15 counties signed on to a framework called the One Arizona Memorandum of Understanding (One Arizona Plan) to expeditiously distribute funds across Arizona from national opioid settlements. The agreement, once finalized, ensured that Arizona received the maximum amount of money available from future opioid settlements, the City of Prescott was included in this class action suit and has been awarded funding to this date totaling \$762,810 and has a current balance of \$710,303. The One Arizona Plan provides funding for programs to address and impact opioid abuse, and includes reporting requirements for greater transparency of how money is used. Allocation to each of the 15 counties and 91 cities and towns is based on population and relative degree of harm suffered in the community as a result of the opioid epidemic. Expenditures must be within the approved purposes including prevention, treatment and education programs. Each local government controls how the settlement funds are spent.

The Prescott Police Department participates as a member of a regional narcotics task force known as the Partners Against Narcotics Trafficking or PANT. Due to staffing shortfalls in Patrol we have not assigned any full time Detectives or a Sergeant to PANT for almost four years and this has impacted our ability to investigate and enforce crimes related to the illegal use of opioids in our community. Related to this based on the 2024 Suspected Drug Overdose statistics we received from the Arizona High Intensity Drug Trafficking Area or HIDTA, Prescott continues to have a high rate of drug overdoses and had a 6.1% increase from 2023.

We are committed to providing the best service to our community and with the funding opportunity provided by the One Arizona Plan we have assigned a Sergeant to PANT in a full time capacity and he will be responsible for supervising a team of detectives tasked with illicit drug investigations and

overdose drug investigation directly related to the opioid epidemic. The Partners Against Narcotics Trafficking Task Force (PANT's) mission is to reduce, dismantle and disrupt drug trafficking organizations (DTO's) within Yavapai County, the State of Arizona, and other points within the United States. This includes transportation, manufacturing, purchasing, sales, consumption and use of illicit drugs and narcotics along with the abuse of prescription pharmaceuticals and other related crimes associated with drug abuse. This is accomplished by education, prevention, and vigorous enforcement including thorough investigations, drug interdictions, and prepared documents for prosecution to ensure that violators are convicted, and assets are removed from DTOs.

The Sergeant assigned to PANT will need an unmarked law enforcement vehicle built with the proper emergency equipment in order to work in the field supervising and conducting narcotics investigations. Moving this full-time employee position to the Opioid Settlement Grant Fund will in turn take some of the burden off of the General Fund. The Sergeant will be assigned to PANT for a minimum of three (3) years with the possibility of extending the assignment year to year.

The request to utilize Opioid Settlement Funds are as follows:

1. Purchase an unmarked police vehicle and install the required emergency equipment in total amount of \$72,125.69
2. Transfer one full time Sergeant position from the General Fund to the Opioid Settlement Grant Fund for the remainder of Fiscal Year 2025 and fully fund that position in FY26.

FINANCIAL IMPACT

Opioid Settlement Funding would be used to purchase the vehicle and emergency equipment. One full time Sergeant position would transfer from the General Fund to the Opioid Settlement Grant Fund.

RECOMMENDED ACTION

1) MOVE to approve City Contract No. 2024-054A5; and 2) MOVE to approve use of opioid settlement funds for vehicle purchase, upfitting, and ongoing personnel costs.

ATTACHMENTS

1. City Contract No. 2024-054A5
2. PPD Silverado Upfitting 12-31-24
3. Approved Purposes One Arizona Agreement



Contract Amendment No. Five (5)
2025 Chevrolet Silverado 1500 Crew Cab 4X4
Contractor: Courtesy Chevrolet
Contract No: 2024-054
Account No(s): 2504600-8915-90225
January 28, 2025

Purpose of Amendment:

To purchase one (1) 2025 Chevrolet Silverado 1500 Crew Cab 4X4 per attached specs, and to extend the expiration date.

The following changes shall be made to the Contract Documents:

Add \$58,811.11 for the purchase and extend the expiration date to March 16, 2026, to match the State Cooperative CTR059315.

All other terms of the contract remain the same.

Summary of Changes to Contract:

	Contract Amount
Original Contract	\$ 248,143.39
Amendment 1 - remove vehicles that are not available for purchase	\$ (169,010.97)
Amendment 2 - extend contract only	\$ -
Amendment 3	\$ 48,942.52
Amendment 4	\$ 172,273.92
Net Change this Amendment 5	\$ 58,811.11
Amended Contract	\$ 359,159.97

Original Expiration Date	March 16, 2024
Amended Expiration Date	March 16, 2026

Accepted by:

Courtesy Chevrolet (*Authorized signer*)

Date

Approved by:

Philip R. Goode, Mayor

Date

Attest:

Sarah M. Siep, City Clerk

Date

Approved as to Form:

Joseph D. Young, City Attorney

Date

Copy to: City Clerk
Fleet/PD

COURTESY CHEVROLET

12/23/2024

STATE OF ARIZONA
VEHICLE QUOTE
STATE CONTRACT# CTR059315

VEHICLE	2025 CHEVROLET SILVERADO 1500 CREW CAB 4X4 RST PER ATTACHED SPECS	\$ 54,110.80
	DELIVERY TO PRESCOTT	\$ 150.00

TOTAL	\$ 54,260.80
SALES TAX	\$ 4,545.31
TIRE TAX	\$ 5.00

GRAND TOTAL	\$ 58,811.11
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IN DEALER STOCK
SUBJECT TO PRIOR SALE



CHEVROLET

2025 SILVERADO 1500 CREW RST 4WD

EXTERIOR: SLATE GRAY METALLIC
INTERIOR: JET BLACK

ENGINE: 5.3L ECOTEC3 V8
TRANSMISSION: 10-SPEED AUTO



STANDARD EQUIPMENT

TEAMS FEATURED BELOW ARE INCLUDED AT NO EXTRA CHARGE IN THE STANDARD PRICE SHOWN.

CREW CAB SHORT BED 4WD

OWNER BENEFITS

- 3 YEAR / 36,000 MILE* BUMPER-TO-BUMPER LIMITED WARRANTY
- 5 YEAR / 60,000 MILE* POWERTRAIN LIMITED WARRANTY,

- ROADSIDE ASSISTANCE & COURTESY TRANSPORTATION
- FIRST MAINTENANCE VISIT
- WHICHEVER COMES FIRST
- SEE CHEVROLET.COM OR DEALER FOR TERMS, DETAILS & LIMITS

SAFETY & SECURITY

- CHEV SAFETY ASSIST
- AUTOMATIC EMERGENCY BRAKING
- FORWARD COLLISION ALERT
- FRONT PEDESTRIAN BRAKING
- LANE KEEP ASSIST W/LANE

DEPARTURE WARNING

- FOLLOWING DISTANCE INDICATOR
- INTELLIBEAM-AUTO HIGH BEAM
- HD REAR VISION CAMERA

- TEEN DRIVER MODE
- TIRE PRESSURE MONITORING WITH TIRE FILL ALERT

PERFORMANCE & MECHANICAL

- AUTO LOCKING REAR DIFF
- 170 AMP ALTERNATOR
- STABILITRAK W/ TRAILER SWAY CONTROL & HILL START ASSIST
- TRAILERING PACKAGE WITH HITCH GUIDANCE
- BRAKE PAD WEAR INDICATOR

CONNECTIVITY & TECHNOLOGY

- CHEVROLET INFOTAINMENT 3 PREMIUM WITH GOOGLE BUILT-IN
- 13.4" DIAG HD COLOR TOUCHSCREEN INCL AM/FM BLUETOOTH FOR MUSIC & MOST PHONES W/ WIRELESS ANDROID AUTO & APPLE CARPLAY

FOR COMPATIBLE PHONES

- 12.3" DIAG DIGITAL DRIVER INFORMATION CENTER
- 8 YEARS ONSTAR ONE ESSENTIALS
- SEE ONSTAR.COM FOR TERMS
- SIRIUSXM RADIO CAPABLE; TRIAL INCLUDED WITH SUBSCRIPTION SOLD SEPARATELY
- 120W POWER OUTLET IN CARGO BED & INSTRUMENT PANEL
- USB PORTS
- KEYLESS OPEN, LOCK, & START
- REMOTE START
- REAR SEAT REMINDER

INTERIOR

- DUAL ZONE CLIMATE CONTROL
- POWER WINDOWS
- FRONT 40/20/40 HEATED BENCH SEATS W/ ARMREST
- 10-WAY POWER DRIVER SEAT
- HEATED & WRAPPED STEERING

WHEEL WITH AUDIO CONTROLS

- CARPETED FLOOR
- EXTERIOR
- BODY-COLOR STYLING THEME
- CORNERSTEP REAR BUMPER
- LED CARGO AREA LIGHTING
- EZ LIFT, POWER LOCK, & RELEASE TAILGATE
- POWER ADJUSTABLE HEATED MIRRORS
- LED FOG LAMPS
- REAR-WINDOW DEFOGGER
- FRONT RECOVERY HOOKS

MANUFACTURER'S SUGGESTED RETAIL PRICE

STANDARD VEHICLE PRICE \$54,800.00

OPTIONS & PRICING

OPTIONS INSTALLED BY THE MANUFACTURER MAY REPLACE STANDARD EQUIPMENT SHOWN

ENGINE: 5.3L ECOTEC3 V8
WITH DYNAMIC FUEL MANAGEMENT

Visit us at www.chevy.com

TOTAL VEHICLE PRICE* \$59,635.00

- Z71 OFF-ROAD PACKAGE \$950.00
- TWIN TUBE SHOCKS
- HILL DESCENT CONTROL
- SKID PLATES
- BODY-COLOR STYLING THEME
- CORNERSTEP REAR BUMPER
- LED CARGO AREA LIGHTING
- EZ LIFT, POWER LOCK, & RELEASE TAILGATE
- POWER ADJUSTABLE HEATED MIRRORS
- LED FOG LAMPS
- REAR-WINDOW DEFOGGER
- FRONT RECOVERY HOOKS
- Z71 BADGING
- ALL-WEATHER FLOOR LINERS (DEALER INSTALLED)
- GVWR: 7,100 LBS. (3,221 KG)
- REAR AXLE: 3.23 RATIO
- CONVENIENCE PACKAGE
- ALL-STAR EDITION
- 18" BRIGHT SILVER PAINTED ALUMINUM WHEELS

TOTAL OPTIONS \$2,840.00
TOTAL VEHICLE & OPTIONS \$57,640.00
DESTINATION CHARGE 1,995.00

EPA Fuel Economy and Environment

SILVERADO 4WD

Fuel Economy
17 MPG

combined city/hwy

5.9 gallons per 100 miles

Standard pickup trucks range from 12 to 24 MPG. The best vehicle rates 140 MPG.

19 highway

city

Gasoline Vehicle

You spend
\$6,000
more in fuel costs
over 5 years
compared to the
average new vehicle.

Fuel Economy & Greenhouse Gas Rating

(tailpipe only)

This vehicle emits 520 grams CO₂ per mile. The best emits 0 grams per mile (tailpipe only). Producing and distributing fuel also create emissions. Learn more at fuelconomy.gov.

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 28 MPG and costs \$9,500 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.50 per gallon. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

Annual fuel cost
\$3,100

combined city/hwy

5.9 gallons per 100 miles

19 highway

city

5.9 gallons per 100 miles

19 highway

city

5.9 gallons per 100 miles

19 highway

city

5.9 gallons per 100 miles

19 highway

city

5.9 gallons per 100 miles

19 highway

GOVERNMENT 5-STAR SAFETY RATINGS

This vehicle has not been rated by the government for overall vehicle score, frontal crash, side crash or rollover risk.

Source: National Highway Traffic Safety Administration (NHTSA)
www.safercar.gov or 1-888-327-4236

Equipped with the safety and security of OnStar:
www.onstar.com for details.



PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS CARLINE:
U.S./CANADIAN PARTS CONTENT: 37%
MAJOR SOURCES OF FOREIGN PARTS
CONTENT: MEXICO 37%

NOTE: PARTS CONTENT DOES NOT INCLUDE FINAL ASSEMBLY, DISTRIBUTION, OR OTHER NON-PARTS COSTS.

FOR THIS VEHICLE:
FINAL ASSEMBLY POINT:
OSHAWA, ON CANADA
COUNTRY OF ORIGIN:
ENGINE: UNITED STATES
TRANSMISSION: UNITED STATES

ORDER NO. DOPDOR

SALES MODEL CODE CK 0543

SALES MODEL CODE CK 0543

SALES MODEL CODE CK 0543

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fuelconomy.gov

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Calculate personalized estimates and compare vehicles



Contract Amendment Summary

CONTRACTOR: Courtesy Chevrolet	AMENDMENT NO.: Three (3)
DESCRIPTION: CTR059315 - New Vehicles Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Three (3) to mutually extend this contract from March 17, 2025 through March 16, 2026 unless terminated, canceled or extended as otherwise provided in the contract.
2. All other terms, conditions and provisions of this contract remain unchanged.

Northern Arizona Upfitters

8785 Florentine Rd
Prescott Valley, AZ 86314
+19284760625
info@northernarizonaupfitters.com
www.northernarizonaupfitters.com



Estimate

ADDRESS	SHIP TO	ESTIMATE	240035
Prescott Police Department	8785 Florentine Rd	DATE	12/23/2024
222 S Marina St	Prescott Valley, AZ 86314		
Prescott, Arizona 86303 USA			

VEHICLE INFORMATION
2025 Chevy Silverado 1500 PANT

MANUFACTURE	ITEM #	DESCRIPTION	QTY	RATE	AMOUNT
	Vehicle	2025 Civilian 1500 Chevy Silverado Crew Cab 4x4 PANT Truck	1	0.00	0.00T
		 Front of Truck			
Code3	CD3802RBW-S	Directional, Mega Thin™, Tri Color, surface mount, 12-24VDC, Red/Blue/White, smoked lens	4	130.83	523.32T
Code3	BHGMB-TH21	Mega Thin Behind Grille Brackets	1	81.25	81.25T
	HUO-H31SE	Chevy Silverado 1500 2500 1999-2006 High Low Beam Light Bulbs Combo, 4pcs Super Bright 6000K White Hi/Low Beam Blubs Package - Plus Wig-Wag Factory High Beams	1	149.95	149.95T
		 Sides of Truck			
Code3	C3RNRDC-60L-BWRW	60" Outliner perimeter bar, left wire exit, dual-color, 12 VDC, blue/white-red/white	1	489.15	489.15T
Code3	C3RNRDC-60R-BWRW	60" Outliner perimeter bar, right wire exit, dual-color, 12VDC, blue/white-red/white	1	489.15	489.15T
		 Interior of Truck			
Code3	3599L5	H2COVERT™ Siren - Users have full control of siren, lights and a public address mic, all in a handheld controller.	1	940.92	940.92T
STI-CO	SSHD-TB-V/U/C	COVERT - Tri-Band Sun Shade Antenna - No Roof mounted Antennas	1	299.95	299.95T
		Install Radio Provided by Prescott Police Dept.			
BulletPoint	BMS-GM2019	RubiGrid® GMC Sierra + Chevrolet Silverado Dash Mount With Three DiabloM6 Magnetic Phone Holders - 1 For Phone, 1 For Radio Mic, 1 For H2Covert Handheld controller.	1	199.95	199.95T
		 Rear of Truck			
Code3	MICROPAK-DC-RB	MicroPak Directional, 6-Pack LED Hide-a-Blast, 12-12V, 29FPs, multi color, red.blue	2	85.96	171.92T
STL	T-TGW60	DUAL-ROW 60" LED TRUCK TAILGATE WARNING LIGHT BAR W/ REVERSE STEADY BURN	1	299.95	299.95T
UnderCover	UNDUC1178S	9-C SILVERADO 1500 W/O MULTIFLEX TG 5.8FT(NBS)SMOOTH-READY TO PAINT UNDERCOVER	1	1,349.99	1,349.99T

ELITE SMOOTH

	Paint	Paint Tonneau Cover to match truck's color.	1	1,000.00	1,000.00T
Jotto Desk	475-2107	The Stash, Horizontal (Mount to Cargo Cover) - Quick Release Rifle Storage - Mounted Under Rear Seat	1	750.00	750.00T
AnyGlide	TBS-6416-1	1/2 Ton Truck Bed Storage 16" Wide by 64" Long Single Truck Slide Out	1	849.00	849.00T
		**** Shipping, Shop Supplies, Labor ****			
Tint	Window Tint	Window Tint - All windows excluding the Windshield	1	385.00	385.00T
Tint	Window Tint	Window Tint - Windshield	1	250.00	250.00T
EGIS	PDM - Wiring Harness	14 Circuit + Ground, 175 A, 12 V W/Kill Switch with custom wiring harness	1	399.95	399.95T
	Shop Materials	Misc. shop supplies (Wiring, Connectors, hardware)	38	2.00	76.00T
	Labor	EVT Certified Installation	38	95.00	3,610.00
	Shipping	Shipping charges	1	199.95	199.95

Contact Northern Arizona Upfitters to pay.

Payment Terms and Conditions: Please note that all rates listed are valid for 30 days.

SUBTOTAL 12,515.40

TAX 799.18

TOTAL **\$13,314.58**

Accepted By

Accepted Date

APPROVED PURPOSES AS DEFINED IN THE ONE ARIZONA AGREEMENT

Through evidence-based, evidence-informed, or promising programs or strategies:

A. Treat Opioid Use Disorder (OUD)

Support treatment of OUD and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction.

B. Support People in Treatment and Recovery

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

C. Connect People Who Need Help to the Help They Need (Connections to Care)

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

D. Address the Needs of Criminal-Justice-Involved Persons

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system.

E. Address the Needs of Pregnant or Parenting Women and their Families, Including Babies with Neonatal Abstinence Syndrome

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome.

F. Prevent Over-Prescribing and Ensure Appropriate Prescribing and Dispensing of Opioids

G. Discourage or Prevent Misuse of Opioids

H. Prevent or Reduce Overdose Deaths and Other Opioid-Related Harms

I. First Responders

Support current and future law enforcement expenditures relating to the opioid epidemic and educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

J. Leadership, Planning and Coordination

Support community regional planning to identify goals, areas and populations with the greatest needs for treatment intervention services; a government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes; invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative efforts; provide resources to staff government oversight and management of opioid abatement programs.

K. Support Training to Abate the Opioid Epidemic Through Activities, Programs, or Strategies

L. Support Opioid Abatement Research

Including evaluation of programs and strategies described in this opioid abatement strategy list, use of non-opioid treatment of chronic pain, innovative enforcement efforts, deterrence of opioid misuse within criminal justice populations, and medication assisted treatment such as prescription methadone.



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: IT
ITEM #: 8.L
SUBJECT: Approval of City Contract No. 2025-132 with Server Monkey for Three Years of Nutanix Server Infrastructure Software Support & Maintenance Using Contract OMNIA 01-169 (NCPA 01-169) in an Amount Not to Exceed \$158,326.44. Funding is Budgeted & Available in the IT Department Budget.

ITEM SUMMARY

This item is for the approval of a 3-year contract in the amount of \$158,326.44 (\$52,775.48 per year paid fully up front) for the implementation of Nutanix as the City's new server infrastructure provider to significantly enhance performance and resilience, reduce maintenance overhead, and ensure long-term scalability to meet the City's growing demands.

BACKGROUND

The City's current server infrastructure supports critical systems like 911 Dispatch, financial systems, Computers in Police and Fire Department vehicles, water and wastewater control systems any many other automated systems. The server infrastructure has reached its capacity and life cycle limits and is becoming increasing inefficient and difficult to manage or expand. After evaluating alternatives (Attachment 1: Competitive Vendor and Cost Analysis), the leading choice is Nutanix, a provider of Hyperconverged Infrastructure (HCI) used by major organizations like the U.S. Federal Government, Toyota, and Arizona State University (Attachment 2: Case Study).

Nutanix HCI offers simplicity, efficiency, reliability, scalability, and cost savings. Unlike the current system, which relies on separate backup sites that are costly to maintain, Nutanix integrates resources into a single virtual system. This setup ensures seamless operation, even during outages, without human intervention. The transition, handled by Nutanix in collaboration with City IT staff, will include setup, configuration, and training, with an expected implementation time of 3-4 weeks after contract approval. This upgrade will modernize the City's infrastructure while reducing operational burdens.

FINANCIAL IMPACT

\$158,326.44 for three-year contract
Funding is Budgeted & Available in the Information Technology Department Budget.

RECOMMENDED ACTION

MOVE to approve City Contract No. 2025-132

ATTACHMENTS

1. Attachment 1 Competitive Vendor Analysis
2. Attachment 2 Case Study
3. City Contract No. 2025-132

Attachment 1: Competitive Vendors and Cost Analysis

When looking at the landscape of alternatives for the City's Server Infrastructure, IT looked at the top alternatives and analyzed the pros and cons of each route and how it might assist the City in reaching the goals of resilience and scalability.

Microsoft Hyper-V

This is the system we are currently using and has the IT Department shopping for alternatives. Remaining with Hyper-V would be the route of changing nothing and just attempting to expand and scale up with the model we are currently using.

To stick with the island analogy mentioned earlier, this would be just adding one island at a time and having to add a backup island for each additional primary island. It would perpetuate the current challenge because with every island that gets added, the whole island chain becomes more complex and resource-intensive to manage.

From a cost standpoint, let's use the benchmark of 100 different foods that the island chain is producing (in the technical world, I am referring to hosting 100 virtual machines or virtual servers). To produce the 100 different foods, Hyper-V would require 7 primary islands and 7 backup islands. The software and licenses for this (no support included) would be about \$12,000 per island for a total around \$168,000 and all of our current challenges would remain.

VMware

Vmware is the largest player in this field and also the most expensive and complex. The IT Department previously used VMware before transitioning to Hyper-V. Since then, VMware has changed and mostly caters to very large organizations and with that, additional layers of complexity are added that would not be utilized for the City's needs.

In terms of our island chain, it would take 7 additional islands and 3 backup islands to produce the 100 necessary foods, but each island would also get a few specialized crews to constantly examine the power plant, factory inputs/outputs, grain silo levels, and the like. Every crew would have to be managed, and a helicopter is always circling overhead that would require additional complex management as well.

Looking at cost, base licensing alone would be around \$160,000 and that figure doesn't include the seamless redundancy we would need and support is typically 25%, which would bring the price closer to

\$200,000 for basic operations. If we wanted to add on all of their advanced features, the price could even land above \$500,000.

XCP-ng

XCP-ng is an “open-source” server infrastructure platform. The term “open-source” could be thought of as a community recipe book: anyone can use it, add recipes, modify them, or create their own private cookbook. It can be a powerful tool for those fluent in Linux (different than Microsoft Windows) and willing to invest time to master it. However, it lacks the ease of use and built-in robustness needed for straightforward, enterprise-level operations.

For our island chain, we would need 7 primary islands and 7 backup islands but the communication between islands would be more akin to morse code and integrating a new island would require a carefully crafted secret handshake. And the real kicker is that all of the instruction manuals are written in French. A couple of the workers took French in high school but a lot of energy would have to be directed to teaching the workers conversational French in a hurry.

From a cost perspective, XCP-ng doesn’t have upfront licensing fees but the support for the 14 islands can run about \$3,000 per island per year (\$126,000 for 3 years). In this scenario, support would be heavily relied upon and the time investment for staff members to learn French (Linux virtualization) would not be a worthy path to pursue.

Nutanix

Nutanix is a server solution that melds all of the islands into a single landmass so that every factory, workforce, grain silo, and power plant is just a part of the same grid (or “cluster” in server terms). All of the factories work together producing all of the food the community needs and they are linked together so that no single factory is important enough to take down production of any food item. Should an outage or problem arise, the problematic crew or factory is sidelined, full production keeps rolling, and a notice is sent to a patrolling ship to come and investigate at its earliest convenience.

Looking specifically at scalability, if the island chain needs more power, workforce, etc., a new island can be merged into the landmass and told to simply connect. From that point on, the new island’s resources just become additional capacity for critical food production.

Looking at cost, 3 years of Nutanix will land at \$158,326.44 (\$52,775.48 per year paid fully up front), and this includes a tech crew from Nutanix fully configuring the initial group of islands while training City staff in the process and ensuring that everything is tuned and working as expected. After the successful launch, Nutanix will be fully supporting this implementation and servicing any need that arises.

Attachment 2: Case Study

In doing research to determine the best path for the City's server infrastructure, it came to our attention that Arizona State University is a Nutanix customer and that they were willing to answer any of the IT Department's questions and provide a virtual tour of their entire system.

This was a particularly enlightening experience because it turned out that ASU has traveled almost the exact same path as the City of Prescott. Starting with VMware, dabbling with XCP-ng, then doing a large-scale implementation of Hyper-V, discovering its weaknesses and ever-increasing overhead, and is currently a content customer of Nutanix.

ASU IT gave City IT multiple hours to ask questions and provided a live tour through their Nutanix management systems and how they operate it. The specific items that stood out the most were:

Painless Resource Allocation

In terms of our islands, think of a scenario where it is very obvious that there are 3 work crews dedicated to corn production and 2 are sitting around without work to do. With Nutanix, you can move 2 work crews over to fish processing since they need a hand. Currently on Hyper-V, the whole factory would need to be shut down to make that adjustment.

Clear and Concise Visibility

Let's say that a grain silo door jams or a worker faints from exhaustion. In our current setup, identifying the exact problem might require searching every silo or worker manually, sometimes shutting down a factory to locate the issue. With Nutanix, a flag would immediately pop up over the exact problem, and all workflow would automatically route around it.

Efficient Scaling for Future Growth

In the current system, every new island is a standalone addition and requires a backup island to come along with it. Each addition has to be managed individually, increasing overhead and complexity. With Nutanix, every new island is a simple and welcome addition, seamlessly increasing the capacity of the cluster without needing to manage specific items individually.

After walking through ASU's environment and seeing firsthand how Nutanix resolved the challenges they faced with Hyper-V (our current system)—challenges that closely mirror our own—it indicates that this solution provides the scalability, resilience, and efficiency needed for our current needs and future expansion. ASU's successful implementation gives the City IT Department confidence that Nutanix can address our current pain points while positioning us for future growth.



COOPERATIVE AGREEMENT

Between

**The City of Prescott
And
Server Monkey**

For

Nutanix Server Infrastructure Software Support & Maintenance

Contract No: 2025-132

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of January 28, 2025, between the City of Prescott, an Arizona municipal corporation (the "City"), and Server Monkey (the "Vendor").

This Agreement between the City and the Vendor adheres to pricing found in the approved cooperative purchasing contract number (the "Contract") #01-169 with Promark Technology, Inc. through OMNIA Partners. A copy of the cooperative purchasing contract is attached hereto as Exhibit B and incorporated herein by reference.

COMPENSATION: The City shall pay the Vendor an amount not to exceed \$158,326.44 for providing Nutanix Server Infrastructure Software Support & Maintenance at the unit rate set in the OMNIA Contract as attached hereto as Exhibit A and incorporated herein by reference.

The City shall pay the Vendor upon delivery and acceptance of the Goods/Services and upon submission and approval of the invoice(s). The invoice(s) shall (i) contain a reference to this Agreement and the Contract and (ii) document the Goods/Services delivered and accepted to date. Additionally, invoices submitted without referencing this Agreement and the Contract will be subject to rejection and may be returned.

Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

City of Prescott
201 N Montezuma Street
Prescott, AZ 86301
contracts@prescott-az.gov

Survey Monkey
2130 W Sam Houston Parkway N
Houston, TX 77043
Paul.palazzolo@servermonkey.com

TERM OF CONTRACT: Per the terms of Contract number #01-169 with Promark Technology, Inc. through OMNIA Partners. Contract #01-169 is a multi-year contract beginning

from the date of award December 14, 2023, for three (3) years expiring on December 31, 2026. The contract may be renewed annually for an additional two (2) years, if mutually agreed on.

This City of Prescott Cooperative Agreement shall follow the terms of the contract as outlined above.

CONFLICT OF INTEREST:

Pursuant to ARS Section 38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting, or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

TERMINATION FOR CONVENIENCE:

The City reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the City without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the City. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the City upon demand. The Contractor shall be entitled to receive just and equitable compensation for work completed, and materials accepted before the effective date of the termination.

INSURANCE REQUIREMENTS:

Vendor to provide certificates of insurance evidencing insurance coverage in a sufficient amount to protect against loss.

DATED: _____ day of _____, 20____

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

Survey Monkey

City of Prescott, a municipal corporation:

(Authorized Signature)

Philip R. Goode, Mayor

By: _____
(Printed Name)

Title: _____

Email: _____

ATTEST:

APPROVED AS TO FORM:

Sarah M. Siep, City Clerk

Joseph D. Young, City Attorney

EXHIBIT A
Quote



Server Monkey
2130 W Sam Houston Parkway N
Houston, Texas 77043
1-855-432-8918

Quote

Bill to	Ship to	Quote Info	
Jared Haxton City of Prescott 432 N. Virginia St Prescott, Arizona, 86301 United States T: (928) 777-8005	Jared Haxton City of Prescott 432 N. Virginia St Prescott, Arizona, 86301 United States T: (928) 777-8005	Sales Representative Quote Proposal Date of Proposal	Paul Palazzolo Q-67178 Nov 4, 2024

Shipping Method
Use My Own Shipping Account Pay Via Your Own Account - \$0.00

Contract #NCPA01-169

Products	SKU	Price	Qty	Tax	Subtotal
Nutanix Cloud Infrastructure (NCI) Starter Software License & Production Software Support <i>name: Nutanix Cloud Infrastructure (NCI) Starter Software License & Production Software Support</i> <i>sku: SW-NCI-STR-PR</i> <i>price: 899</i> Comment 36 Months Contract #NCPA01-169	SW-NCI-STR-PR	\$899.00	144	\$10,809.58	\$129,456.00
INFRASTRUCTURE MODERNIZATION SVCS SERVICE OFFERING HCI CLUSTER <i>name: INFRASTRUCTURE MODERNIZATION SVCS SERVICE OFFERING HCI CLUSTER</i> <i>sku: CNS-INF-A-SVC-DEP-STR</i> <i>price: 3219</i> Comment Contract #NCPA01-169 Professional Services	CNS-INF-A-SVC-DEP-STR	\$3,219.00	3	\$806.36	\$9,657.00
INFRASTRUCTURE MODERNIZATION LICS SERVICE OFFERING <i>name: INFRASTRUCTURE MODERNIZATION LICS SERVICE OFFERING</i> <i>sku: CNS-INF-A-SVC-MIG-VMS</i> <i>price: 3506</i> Comment Contract #NCPA01-169 VM Migration: Qty 2 (1x = 5 VM's) a total of 10 VM migrations	CNS-INF-A-SVC-MIG-VMS	\$3,506.00	2	\$585.50	\$7,012.00

Original Subtotal:	\$146,125.00
Quoted Subtotal:	\$146,125.00
Grand Total (Excl. Tax):	\$146,125.00
Tax:	\$12,201.44
Grand Total (Incl. Tax):	\$158,326.44

EXHIBIT B
Cooperative Purchasing Contract

Region 14 Education Service Center

Contract # 01-169

for

Advanced Technology Solutions Aggregator

with

Promark Technology, Inc.

Effective: December 14, 2023

The following documents comprise the executed contract between the Region 14 Education Service Center, and Promark effective December 14, 2023:

- I. Vendor Award Letter
- II. Vendor Cover Letter
- III. Master Agreement-General T&Cs and executed signature form
- IV. Supplier's Response to the RFP, incorporated by reference



Region XIV Education Service Center

1850 Highway 351
Abilene, TX 79601-4750
325-675-8600
FAX 325-675-8659

Thursday, December 14th, 2023

Promark Technology, Inc.
ATTN: Stephen T. Hartung
10900 Pump House Road, Suite B
Annapolis Junction, MD 20701

Dear Stephen:

Region XIV Education Service Center is happy to announce that Promark Technology, Inc. has been awarded an annual contract for Advanced Technology Solutions Aggregator based on the proposal submitted to Region XIV ESC.

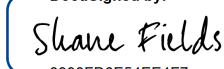
The contract is effective immediately and will expire on December 31st, 2026. The contract can then be renewed annually for an additional two years, if mutually agreed on by Region XIV ESC and Promark Technology, Inc.

We look forward to a long and successful partnership underneath this contract.

If you have any questions or concerns, feel free to contact me at 325-675-8600.

Sincerely,

DocuSigned by:


Shane Fields

Region XIV, Executive Director

November 14, 2023

Region 14 Education Service Center
1850 Highway 351
Abilene, Texas 79601

RE: SOLICITATION # 14-23 REQUEST FOR PROPOSAL (RFP) FOR ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR

To whom it may concern:

Promark Technology, Inc., a wholly owned Ingram Micro company, is pleased to submit the attached response to Region 14 Education Service Centers Solicitation Number 14-23 – Request for Proposal (RFP) for Advanced Technology Solutions Aggregator. Promark, along with our parent company, Ingram Micro, Original Equipment Manufacturers (OEM) and reseller partners, are uniquely positioned to support this contract for Region 14 Education Service Center (Region 14) and the National Cooperative Purchasing Alliance (NCPA) customers throughout the United States.

As you will find outlined throughout our proposal and has been demonstrated with our current NCPA Advanced Technology Solutions Aggregator contract, we have the past performance, experience, size, and financial resources to support the expected sales level of the contract; the geographic coverage to support the customers; the ability to bring manufacturers to the contract to support the technology solutions requested, and the experience to manage the contract and its reporting requirements.

Promark, if awarded a contract, will continue to use the NCPA Contract as a centerpiece of our SLED Contract Program. We will work with Region 14 and NCPA to promote the contract's use to our Public Sector Resellers and bring our vast depth and breadth of manufacturers as participants on an awarded contract.

We look forward to the opportunity to discuss our proposal with you in more detail. Please feel free to contact me directly with any questions or clarification you may have with our response. I can be reached at 800.634.0255 or via email at toddh@promarktech.com.

Sincerely,



Stephen T. Hartung
Director

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TAB 1 - MASTER AGREEMENT - GENERAL TERMS AND CONDITIONS

- **Customer Support**

The vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

Acknowledged and affirmed.

- **Disclosures**

Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

Acknowledged and affirmed.

- **Renewal of Contract**

Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

Acknowledged and affirmed.

- **Funding Out Clause**

Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

Requested Exception in Appendix 2.

- **Shipments (if applicable)**

The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated

shipping time is not acceptable.

Requested Exception in Appendix 2.

- **Tax Exempt Status**

Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

Acknowledged and affirmed.

- **Payments**

The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and approval by NCPA is provided to the awarded vendor.

Acknowledged and affirmed. Promark requests the ability for our authorized reseller partners submitted to Region 14 and NCPA to be able to receive payment from the purchasing entity.

- **Adding Authorized Distributors/Dealers**

Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.

Acknowledged and affirmed.

Purchase orders and payment can only be made to awarded vendor or distributors/ business partners/resellers previously approved by NCPA.

Acknowledged and affirmed.

Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.

Acknowledged and affirmed.

All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

Acknowledged and affirmed.

- **Pricing**

All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.

Acknowledged and affirmed.

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

Requested Exception in Appendix 2.

- **Warranty**

Proposal should address the following warranty information:

- Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
- Availability of replacement parts
- Life expectancy of equipment under normal use
- Detailed information as to proposed return policy on all equipment

Products: Vendor shall provide equipment, materials and products that are new unless otherwise specified, of good quality and free of defects

Construction: Vendor shall perform services in a good and workmanlike manner and in accordance with industry standards for the service provided.

Details of manufacturers' warranties and other answers to the above are included with the proposed equipment descriptions. Return policies are determined by the product manufacturers.

- **Safety**

Vendors performing services shall comply with occupational safety and health rules and regulations. Also all vendors and subcontractors shall be held responsible for the safety of their employees and any conditions that may cause injury or damage to persons or property.

Acknowledged and affirmed.

- **Permits**

Since this is a national contract, knowing the permit laws in each state is the sole responsibility of the vendor.

Acknowledged and affirmed.

- **Indemnity**

The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract.

Requested Exception in Appendix 2.

- **Franchise Tax**

The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

Acknowledged and affirmed.

- **Supplemental Agreements**

The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

Acknowledged and affirmed.

- **Additional Agreements**

If an awarded vendor requires additional agreements, i.e., master service agreement, end user licensing agreement, etc. a copy of the proposed agreement must be included with the proposal. Any additional agreements provided by the vendor are complementary to the terms and conditions stated herein or for the use of participating entities and shall not replace the entirety of the Master Agreement.

Acknowledged and affirmed. Additional Agreements located in Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements

- **Certificates of Insurance**

Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days

notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

Acknowledged and affirmed.

- **Legal Obligations**

It is the Respondent's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

Acknowledged and affirmed.

- **Protest**

A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:

- Name, address and telephone number of protester
- Original signature of protester or its representative
- Identification of the solicitation by RFP number
- Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested

Any protest review and action shall be considered final with no further formalities being considered.

Acknowledged and affirmed.

- **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders and regulation of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; pandemic; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the

control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

Acknowledged and affirmed

- **Prevailing Wage**

It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

Acknowledged and affirmed.

- **Termination**

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

Acknowledged and affirmed.

- **Open Records Policy**

Because Region 14 ESC is a governmental entity responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).

Acknowledged and affirmed.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region 14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Acknowledged and affirmed.

PROCESS

Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

- **Contract Administration**

The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.

- **Contract Term**

The contract term will be for three (3) year starting from the date of the award. The contract maybe renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.

It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.

- **Contract Waiver**

Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.

- **Price Increases**

Should it become necessary, price increase requests may be submitted at any point during the term of the contract by written amendment. Included with the request must be documentation and/or formal cost justification for these changes. Requests will be formally reviewed, and if justified, the amendment will be approved.

- **Products and Services Additions**

New Products and/or Services may be added to the resulting contract at any time during the term by written amendment, to the extent that those products and/or services are within the scope of this RFP.

- **Competitive Range**

It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.

- **Deviations and Exceptions**

Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.

- **Estimated Quantities**

While no minimum volume is guaranteed, the estimated (but not limited to) annual volume for Products and Services purchased under the proposed Master Agreement is 250 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program.

- **Evaluation**

Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.

- **Formation of Contract**

A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process. Contract award letter issued by Region 14 ESC is the counter-signature document establishing acceptance of the contract.

- **NCPA Administrative Agreement**

The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.

- **Clarifications/Discussions**

Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondent's are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.

- **Multiple Awards**

Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.

- **Past Performance**

Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Promark acknowledges the NCPA proposal evaluation process and proposal and contract terms.

EVALUATION CRITERIA

- **Pricing (40 points)**

Electronic Price Lists

- Products, Services, Warranties, etc. price list
- Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- **Ability to Provide and Perform the Required Services for the Contract (25 points)**

- Product Delivery within participating entities specified parameters
- Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
- Vendor's ability to perform towards above requirements and desired specifications.
- Past Cooperative Program Performance. Quantity of line items available that are commonly purchased by the entity.
- Quantity of line items available that are commonly purchased by the entity.
- Quality of line items available compared to normal participating entity standards.

- **References and Experience (20 points)**

- A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years
- Respondent Reputation in marketplace
- Past Experience working with public sector.
- Exhibited understanding of cooperative purchasing

- **Value Added Products/Services Description, (8 points)**

- Additional Products/Services related to the scope of RFP
- Marketing and Training
- Programs and practices that may be advantageous to Public Agencies
- Customer Service

- **Technology for Supporting the Program (7 points)**

- Electronic on-line catalog, order entry use by and suitability for the entity's needs
- Quality of vendor's on-line resources for NCPA members.
- Specifications and features offered by respondent's products and/or services

Promark acknowledges the NCPA proposal evaluation criteria as outlined above.

SIGNATURE FORM

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this bid in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Promark Technology, Inc.

Company Name

10900 Pump House Road, Suite B

Address

Annapolis Junction, MD 20701

City

State

Zip

800.634.0255

Telephone Number

301.725.7869

Fax Number

toddh@promarktech.com

Email Address

Stephen T. Hartung

Printed Name

Director

Position



Authorized Signature

TAB 3 VENDOR QUESTIONNAIRE

Please provide responses to the following questions that address your company's operations, organization, structure, and processes for providing products and services.

Locations Covered

- Bidder must indicate any and all locations where products and services can be offered.

☒ All 50 States & District of Columbia (Selecting this box is equal to checking all boxes below)			
☐ Alabama	☐ Illinois	☐ Montana	☐ Rhode Island
☐ Alaska	☐ Indiana	☐ Nebraska	☐ South Carolina
☐ Arizona	☐ Iowa	☐ Nevada	☐ South Dakota
☐ Arkansas	☐ Kansas	☐ New Hampshire	☐ Tennessee
☐ California	☐ Massachusetts	☐ New Jersey	☐ Texas
☐ Colorado	☐ Michigan	☐ New Mexico	☐ Utah
☐ Connecticut	☐ Minnesota	☐ New York	☐ Vermont
☐ Delaware	☐ Mississippi	☐ North Carolina	☐ Virginia
☐ D.C.	☐ Missouri	☐ North Dakota	☐ Washington
☐ Florida	☐ Kentucky	☐ Ohio	☐ West Virginia
☐ Georgia	☐ Louisiana	☐ Oklahoma	☐ Wisconsin
☐ Hawaii	☐ Maine	☐ Oregon	☐ Wyoming
☐ Idaho	☐ Maryland	☐ Pennsylvania	

☐ All U.S. Territories and Outlying Areas (Selecting this box is equal to checking all boxes below)	
☐ American Samoa	☐ Northern Marina Island
☐ Federated States of Micrones	☐ Puerto Rico
☐ Guam	☐ U.S. Virgin Islands
☐ Midway Islands	

☐ All Canada Provinces and Territories (Selecting this box is equal to checking all boxes below)	
☐ Alberta	☐ Prince Edward Island
☐ British Columbia	☐ Quebec
☐ Manitoba	☐ Saskatchewan
☐ New Brunswick	☐ Northwest Territories
☐ Newfoundland and Labrador	☐ Nunavut
☐ Nova Scotia	☐ Yukon
☐ Ontario	

If awarded a Master Agreement, will your company extend the terms offered in your Proposal to public agencies in Canada? If no or maybe, please explain.

☐ Yes
 ☐ Maybe
 ☒ No
 We have a Canadian organization that would handle Canada and are restricted from participating in that market.

If awarded a Master Agreement, will your company extend the terms offered in your Proposal to private sector customers?

☐ Yes
 ☐ Maybe
 ☒ No

Minority and Women Business Enterprise (MWBE) and (HUB) Participation

It is the policy of some entities participating in NCPA to involve minority and women business enterprises (MWBE) and historically underutilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.

☐ **No** Minority/Women Business Enterprise
 Respondent Certifies that this firm
 a Minority / Women Business Enterprise

☐ **No** Historically Underutilized Business
 Respondent Certifies that this firm is a
 Historically Underutilized Business

Small Business, MWBE and HUB Growth

If Proposer is a Large, National or Multinational Organization/Corporation, what programs are in place that partners or supports the growth of small and MWEB and HUB business? If yes, please describe.

☐ N/A, we are a recognized small, MWEB or HUB organization

☐ No, we do not have any programs in place.

☒ Yes, we have programs in place. We support Small and Diversity Technology Reseller Partners in several ways. We promote small/diversity partners as authorized resellers on our contracts. We also have a Supplier Diversity Program that helps partners leverage small/diversity resellers to capture required small and diversity spend for contracts.

Residency

Responding Company's principal place of business is in the city of Annapolis Junction,
State of Maryland.

Felony Conviction Notice

Please Check Applicable Box (If the 3rd box is checked, a detailed explanation of the names and convictions must be attached):

- ☐ A publicly held corporation; therefore, this reporting requirement is not applicable.
- ☒ Is not owned or operated by anyone who has been convicted of a felony.
- ☐ Is owned or operated by the following individual(s) who has/have been convicted of a felony

Distribution Channel

Which best describes your company's position in the distribution channel:

- ☐ Manufacturer Direct ☐ Certified education/government reseller
- ☒ Authorized Distributor ☐ Manufacturer marketing through reseller
- ☐ Value-added reseller ☐ Other: _____

Processing Contact Information

Contact Person	<u>Britteny Collins</u>
Title	<u>Contract Manager</u>
Company	<u>Promark Technology, Inc.</u>
Address	<u>10900 Pump House Road, Suite B</u>
City/State/Zip	<u>Annapolis Junction, MD 20701</u>
Phone	<u>800.634.0255</u>
Email	<u>brittenyc@promarktech.com</u>

Pricing Information

In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing. If answer is no, attach a statement detailing how pricing for NCPA participants would be calculated for future product introductions.

- ☒ Yes ☐ No

Pricing submitted includes the required NCPA administrative fee. The NCPA fee is calculated based on the invoice price to the customer.

☒ Yes ☐ No

Cooperatives

List any other cooperative or state contracts currently held or in the process of securing.

Cooperative/State Agency	Discount Offered	Expires	Annual Sales Volume
NCPA - Advanced Technology Solutions Aggregator	2%	July 31, 2024	
GSA Schedule	Varies by line	May 3, 2026	
Ohio STS Contract	Based on GSA	May 3, 2026	
TX DIR Contract	7% - 15%	August 24, 2025	

TAB 4 - VENDOR PROFILE

Please provide the following information about your company:

- **Company's official registered name.**

Promark Technology, Inc.

- **Brief history of your company, including the year it was established.**

Promark Technology, Inc., a wholly owned Ingram Micro company, is a value-added distributor of Information Technology products and solutions. Promark is a registered C Corporation formed in the State of Maryland and was formed in 1971. Promark has been engaged as a distributor for the IT Industry for over 40 years. Promark works with its channel partners consisting of IT Manufacturers, Value Added Reseller and System Integrators to offer IT Hardware, Software and solutions to Commercial, Federal, and State and Local accounts throughout the United States. Promark was acquired by Ingram Micro in November of 2012. Promark continues to act as a distributor of IT products but also serves as the Public Sector Contract support arm of Ingram Micro.

Promark will bring the resources of both Promark and its parent, Ingram Micro, to support the NCPA Contract initiative. Below is a brief history of Ingram Micro.

Ingram Micro's business beginnings are traced back to 1979, when Ingram Micro began operated as Micro D Inc. In 1989 Micro D merged with Ingram Computer to create the microcomputer industry's first \$1 billion wholesale distribution company, Ingram Micro D. Through a series of acquisitions, mergers and organic growth, we have expanded and strengthened our global footprint and product breadth, and greatly increased our service capabilities. In recent years, we have made major strides in expanding our presence in areas of strategic focus. Our focus is on profitably growing and optimizing our core technology solutions business while leveraging our global infrastructure and world-class partnerships to further broaden the reach of acquired operations, including expanding and enhancing our established services business and continuing to make strategic investments in high-margin services and solutions.

As shown in the table below, Ingram has operations in 52 countries, spanning all global regions, as shown in the table below. We also operate support centers in Bulgaria, Costa Rica, Egypt, India, Philippines and Puerto Rico.

Additionally, we serve many other markets where we do not have an in-country presence through our various export sales offices, including our general tele-sales operations in numerous markets. We sell our products and services to a global customer base of approximately 160,000 customers in more than 200 countries. We are one of the market leaders in technology distribution in North America and Latin America, Europe, and Asia-Pacific.

North America Canada United States Latin America Argentina Brazil Chile Colombia Ecuador Mexico Peru Uruguay	Europe Albania Austria Belgium Croatia Czech Republic Denmark France Finland Germany Hungary Ireland Italy Macedonia	Netherlands Norway Poland Portugal Romania Serbia Slovenia Slovakia Spain Sweden Switzerland United Kingdom	Asia Pacific (including Middle East and Africa) Australia People's Republic of China (including HongKong) Egypt India Indonesia Israel Lebanon Malaysia Morocco New Zealand Pakistan	Saudi Arabia Singapore South Africa Thailand Turkey United Arab Emirates
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Key Metrics

- 2022 Revenue - \$50.8 Billion
- Sales in 200 countries
- 27,000+ associates worldwide
- 134 logistics centers worldwide
- 160,000 customers
- Over 1,500 vendors
- 1.5B units shipped a year
- 24 million active seats on the Ingram Micro Cloud Marketplace

- **Company's Dun & Bradstreet (D&B) number.**

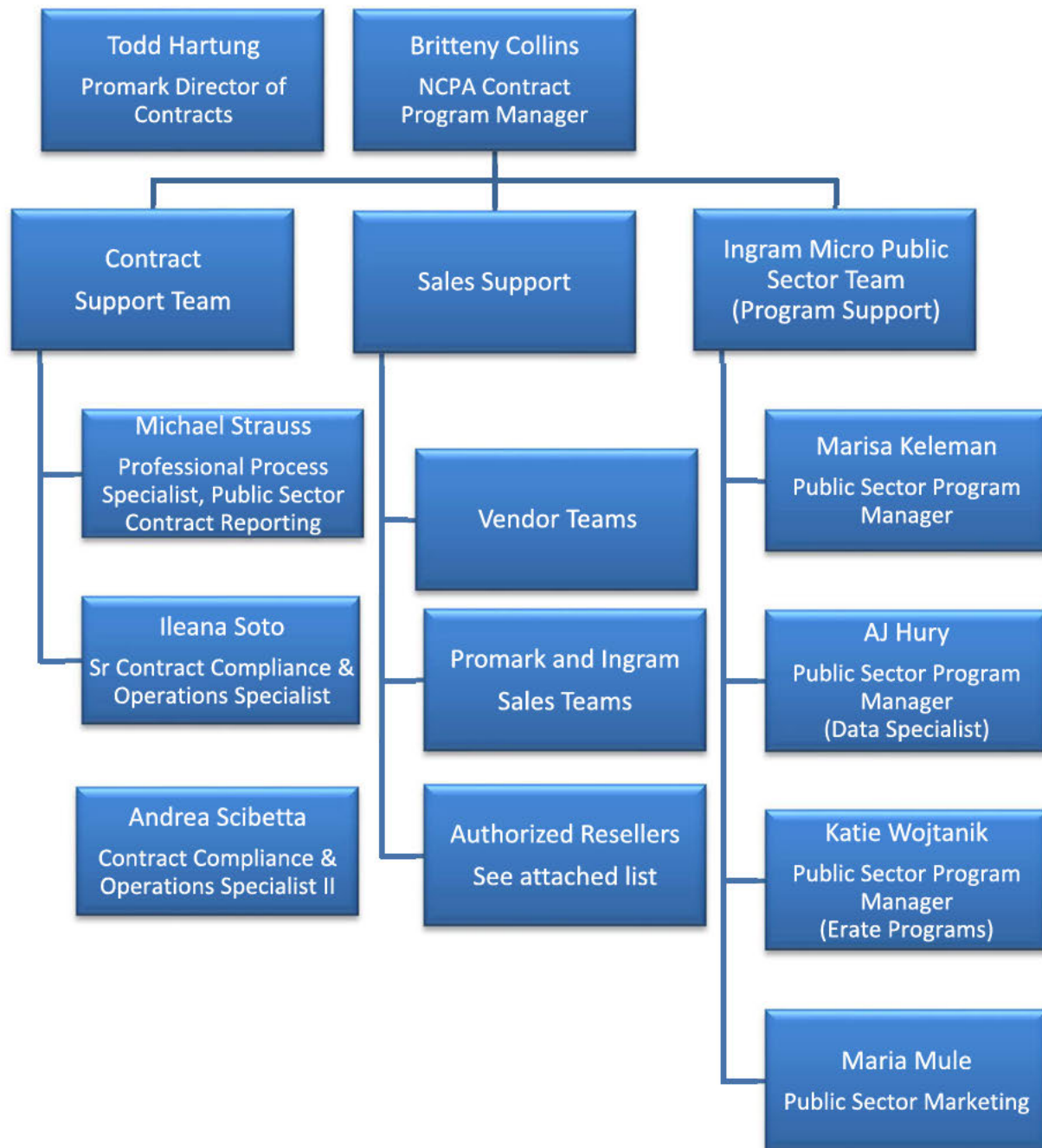
07-4839986 (Promark)

- **Company's organizational chart of those individuals that would be involved in the contract.**

Please refer to the chart on the following page.

- **Corporate office location.**

Promark Technology, Inc.
10900 Pump House Road, Suite B
Annapolis Junction, MD 20701



- List the number of sales and services offices for states being bid in solicitation.

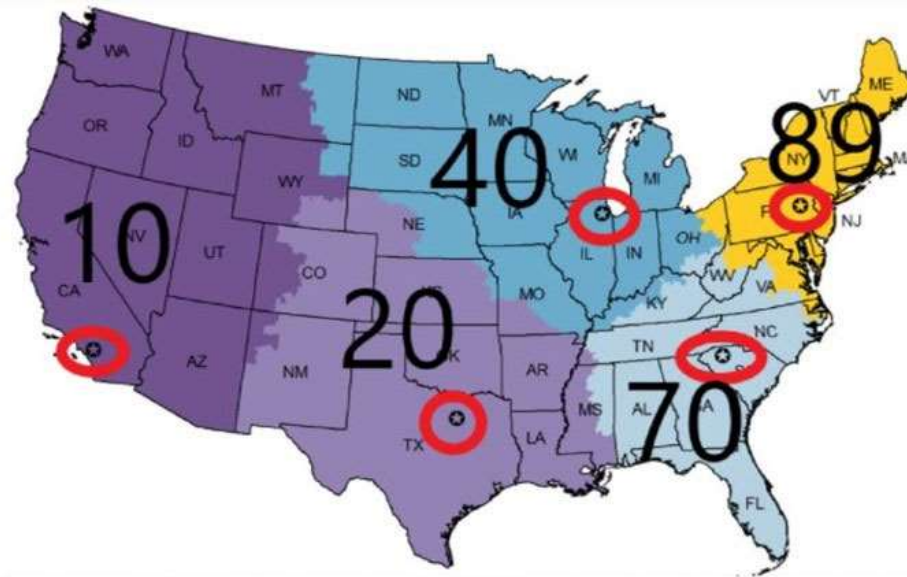
In addition to the Promark sales and vendor business resources, Promark is supported by Ingram Micro Public Sector specialists. Finally, our authorized Value-Added Resellers and systems integrators will provide sales and technical resources to directly to the agencies purchasing under the NCPA contract. The Promark and Ingram Micro resources are included in the following pages.

Sales and Services Support Through Authorized Reseller Partners - A listing of Promark and Ingram authorized resellers is included in **Appendix 4 – Promark Authorized NCPA Dealer List**. The list includes resellers that represent many states throughout the country. Each reseller location would equate to a sales location that could provide sales and services to the NCPA Contract customer base. Additionally, several of these resellers, such as ConvergeOne and Connection, support sales throughout the country with multiple locations. Additional resellers can be added during the contract period to provide additional sales support and enhance the coverage area to support NCPA members.

Promark and Ingram Micro Support for Authorized Resellers – Promark and Ingram Micro provide technical support, sales, ordering, financial services, warehousing, and transportation support to our authorized reseller partners. In our distribution services model, we buy, hold title to, and sell technology and mobility products and services to reseller partners who, in turn, typically sell directly to end-users or other reseller partners. Our distribution services enable our suppliers to reach a large, diverse, and highly fragmented base of reseller partners. Our distribution services also provide reseller partners with multi-vendor solutions, integration services, electronic commerce tools, marketing, financing, training and enablement, technical support, and inventory management. Our reseller partners are able to cost-effectively grow their businesses and better serve their customers by leveraging our wide array of technical and professional services, vertical market expertise, business intelligence and analytics services, and other elements that they can employ while avoiding the requisite investment.

Warehouse Operations - As shown below, Ingram Micro has five U.S. Advanced Logistics Center (ALC) locations. These full-service facilities provide for more localized, faster delivery options.

/ *ntentionally Redacted*



Mira Loma - USMR 12510 Micro Dr Mira Loma CA 91752 1-951-727-3300 Time Zone: PST branch10@promark.com Branch 10	Fort Worth - USFW 14500 FAA Blvd Ste 300 Fort Worth TX 76155 1-817-532-3500 Time Zone: CST branch20@promark.com Branch 20	Carol Stream - USCS 415 East Iles Rd Carol Stream IL 60188 1-630-668-0106 Time Zone: CST branch40@promark.com Branch 40	Roebuck 6670 Highway 221 Roebuck SC 29376 Time Zone: EST Branch 70	Hazleton 101 Commerce Dr Hazle Township PA 18202 Time Zone: EST Branch 89
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Transportation - Transportation management is a core competency for Ingram Micro. As a \$50 billion-dollar company, Ingram Micro offers world-class alliances, exceptional economies of scale, and a solid focus on reducing costs in the supply chain. Ingram Micro's shared network of distribution centers provides a full set of on-time, error-free, scalable backroom services from order induction through delivery of finished goods. We believe transportation management is a natural and effective extension to fulfillment. Ingram Micro holds our carrier partners to high standards of performance and in line with our ISO 9001:2015 certification. Key Performance Indicators (KPIs) such as on-time service, claims, invoice accuracy and customer experience are reviewed proactively with our largest carrier partners as part of our continuous improvement processes. Due to the strength of our transportation partnerships and the large volume of business conducted,

Ingram Micro has negotiated advantageous rates and services from the tier one carriers in all modes of transportation. Advantageous terms and conditions, which lower the overall cost of transportation and increase service levels, are a direct result of Ingram Micro's strategic partnership with its carrier providers. Utilizing Ingram Micro's US network allows 98% of the US population to receive their products after only two (2) days in transit via ground transportation. If specified in the reseller's order, Ingram Micro can drop ship directly to an NCPA member.

- List the names of key contacts at each with title, address, phone and e-mail address.

Title	Name	Phone	Email
Promark Program Support Team			
Program Manager	Britteny Collins	240-280-8072	brittenyc@promarktech.com
Professional Process Specialist, Public Sector Contract Reporting	Michael Strauss	716-633-3600 Ext 66168	Michael.strauss@ingrammicro.com
Ingram Public Sector Team			
Public Sector Program Manager	Marisa Keleman	716-633-3600 Ext 66484	marisa.keleman@ingrammicro.com
Public Sector Program Manager	AJ Hury	716-633-3600 Ext 65326	alexander.hury@ingrammicro.com
Public Sector Program Manager	Katie Wojtanik	716-633-3600 Ext 67696	kathleen.wojtanic@ingrammicro.com
Public Sector Marketing	Maria Mule	714.382.1851	maria.mule@ingrammicro.com
Promark and Ingram Micro Public Sector Management Team			
Exec. Dir / General Manager	Tony Celeste	301.957.9011	Tony.celeste@ingrammicro.com
Exec. Director Sales	D.True Madish	404.557.8162	dtrue.madish@ingrammicro.com
Director, Contracts & Programs	Todd Hartung	800.634.0255	toddh@promarktech.com

In addition to an extensive network of VARs, system integrators, and other reseller partners Promark offers sales, vendor management, and business development resource coverage for the U.S. provided on the following pages. Due to the size of our company and sales organization, we have provided a paired down list of our key resources whose primary focus is on supporting the public sector market. We have also listed contacts for Key Business Unit Executives who have additional resources that also provide additional sales support the SLED market for their reseller partners.

Public Sector Sales Resources

Public Sector Executive Leadership Team

Title	Name	Email
Executive Director & General Manager	Tony Celeste	Tony.Celeste@IngramMicro.com
Executive Director, Sales	D. True Madish	DTrue.Madish@IngramMicro.com
Director, Contracts and Programs	Todd Hartung	Stephen.Hartung@IngramMicro.com

Public Sector Sales Management Team

Responsible For	Title	Name	Email
Eastern US	Sales Manager	Adam Springer	Adam.Springer@IngramMicro.com
Western US	Sales Manager	Heather Woodard	Heather.Woodard@IngramMicro.com
Sales Support	Manager	Donna Berti	Donna.Berti@IngramMicro.com

Dedicated Public Sector Account Executives

Territory	Title	Name	Email
Southern	Sr. Account Executive	Rich Hendricks	Richard.Hendricks@IngramMicro.com
Continental	Sr. Account Executive	Ed Potoczniak	Edward.Potoczniak@IngramMicro.com
Western	Sr. Account Executive	Adam Knobloch	Adam.Knobloch@IngramMicro.com
Atlantic	Sr. Account Executive	Jeff Anderson	Jeffrey.Anderson@IngramMicro.com
Capital	Sr. Account Executive	Ken Hermann	Ken.Hermann@IngramMicro.com
NSP's	Sr. Account Executive	Lisa Brown	Lisa.Brown@IngramMicro.com

Ingram Sales Business Unit Executives (Includes Additional Sales Teams and Resources)

Territory	Title	Name	Email
Enterprise Accounts	Exec. Director, Sales	Patricia Gorman	Richard.Hendricks@IngramMicro.com
National Solutions Providers	Director, Sales	Tommy Baboulas	Edward.Potoczniak@IngramMicro.com
SMB Accounts	Director, Sales	Kelly Sander	Adam.Knobloch@IngramMicro.com
Advanced Solutions Accounts	Director, Sales	Michael Deuschle	Jeffrey.Anderson@IngramMicro.com

Public Sector Program Management Team

Responsible for programs and initiatives related to government processes, procedures, federal documentation, and funding.

Responsible For	Name	Email
GSA Pass Thru & Letter of Supply	Marisa Keleman	Marisa.Keleman@IngramMicro.com
DPAS, GovEd Discount Program	AJ Hury	Alexander.Hury@IngramMicro.com
Supply Chain Risk Management (SCRM)	Becky Petrie	Rebecca.Petrie@IngramMicro.com
E-Rate Support, Supplier Diversity Program	Katie Wojtanik	Kathleen.Wojtanik@IngramMicro.com

For fastest service, please contact – PublicSector_Programs@IngramMicro.com

Public Sector Strategic Alliance Team

Responsible for creating go-to-market strategies in partnership with our core vendor teams to drive growth within the Federal marketplace and enable our federal partner community.

Responsible For	Title	Name	Email
Cisco	Strategic Alliance Executive	Stephanie Huffman	Stephanie.Huffman@ingrammicro.com
HPE	Solution Sales Executive	Zach Murez	Zachary.Murez@ingrammicro.com
HPI	Solutions Development Executive	Jon Maderer	Jonathan.Maderer@ingrammicro.com

For fastest service, please contact - PublicSector_Vendors@ingrammicro.com

**Public Sector Inside Sales and Support Teams:
SOUTH**

Quotes: pssouthern_quotes@ingrammicro.com

Orders: pssouthern_orders@ingrammicro.com

Phone: ext. 76859

Sales Manager: Adam Springer

First Name	Last Name	Title	Location
Lori	Addeo	Inside Sales, Team Lead	Buffalo, NY
Paul	Athoe	Inside sales	Buffalo, NY
Kevin	Jasen	Inside sales	Buffalo, NY
Philip	Massaker	Inside sales	Buffalo, NY
Mary	Nelles	Inside sales	Buffalo, NY
Aaron	Reggie	Inside sales	Buffalo, NY
Duncan	Trevathan	Inside sales	Greer, SC
Marisa	Ayerst	Support	Field
Sandra	Ferguson	Support	Greer, SC
Donna	Garland	Support	Greer, SC
Samantha	Gioeli	Support	Buffalo, NY
Jeffrey	Jones	Support	Buffalo, NY
Brooke	Marchitello	Support	Buffalo, NY
Waylon	Pastorius	Support	Buffalo, NY
Carmon	Peterson-Arnold	Support	Greer, SC
Terri	Sorce	Support, Team Lead	Buffalo, NY
Santos	Torres	Support	Buffalo, NY
Dominic	Zanelotti	Support	Buffalo, NY

WEST

Quotes: pswestern_quotes@ingrammicro.com Orders: pswestern_orders@ingrammicro.com

Phone: ext. 76869

Sales Manager: Heather Woodard

First Name	Last Name	Title	Location
Christopher	Alessi	Inside Sales	Buffalo, NY
Daniel	Bordonaro	Inside Sales, Team Lead	Buffalo, NY
Marcus	Coffey	Inside Sales	Scottsdale, AZ
Raffaele	DiPrado	Inside Sales	Buffalo, NY
Linda	Newcomer	Inside Sales	Irvine, CA
Jordan	Reynolds	Inside Sales, Team Lead	Buffalo, NY
Brandi	Schramm	Inside Sales	Buffalo, NY
Anthony	Tringali	Inside Sales	Buffalo, NY
Sona	Bradshaw	Support	Irvine, CA
Gabrielle	Chandler	Support	Greer, SC
Joseph	Cooley	Support	Buffalo, NY
Daniel	Farrell	Support	Buffalo, NY
Evann	Furlong	Support	Scottsdale, AZ
Joan	Hunter	Support	Scottsdale, AZ
Sydney	Kordasiewicz	Support	Buffalo, NY
Maureen	McCarthy	Support	Buffalo, NY
Amanda	Smith	Support	Scottsdale, AZ
Pamela	Tafelski	Support	Buffalo, NY
Joba	Tasnia	Support	Buffalo, NY
Em	Warrington	Support	Buffalo, NY

NORTHEAST

Quotes: psnortheast_quotes@ingrammicro.com

Orders: psnortheast_orders@ingrammicro.com

Phone: ext. 76809

Sales Manager: Donna Berti

First Name	Last Name	Title	Location
Jeffrey	Beshore	Solutions Sales	Annapolis Junction, MD
Diane	Buscaglia-Privateer	Inside Sales	Buffalo, NY
Brian	D'Angelo	Inside Sales	Buffalo, NY
Jim	Dominguez	Inside Sales	Buffalo, NY
Sean	Fettes	Inside Sales	Buffalo, NY
Holly	MacFadyen	Inside Sales	Buffalo, NY
William	Nye	Inside Sales	Buffalo, NY
Shundrey	Patterson	Inside Sales	Annapolis Junction, MD
Jack	Putnam	Inside Sales	Buffalo, NY
Sandy	Sallaj	Inside Sales, Team Lead	Buffalo, NY
Daniel	Velich	Inside Sales	Annapolis Junction, MD
Ashley	Adjogah	Support	Buffalo, NY
Jacob	Anderson	Support	Greer, SC
Rodney	Chatmon	Support	Buffalo, NY
James	Chervinsky	Support	Buffalo, NY
Dana	Cruz	Support	Buffalo, NY
Timothy	Flynn	Support	Buffalo, NY
Christopher	Furlong	Support	Buffalo, NY
Patricia	Hall	Support	Buffalo, NY
Chelsea	Jamison	Support	Greer, SC
Kenisha	Johnson	Support	Greer, SC
Ryan	Johnson	Support	Buffalo, NY
James	Maass	Support	Buffalo, NY
Kayla	Milton	Support	Greer, SC
Casey	Prohn	Support	Buffalo, NY
Peter	Waite	Support	Buffalo, NY
Samantha	Wnek	Support	Buffalo, NY

- **Define your standard terms of payment.**

Standard payment terms are net 30. We also offer several alternative financing options to our partners including the following: Multiple Channel Friendly Leasing options, Flooring, Escrow options.

- **Who is your competition in the marketplace?**

Within our Technology Solutions business, Promark / Ingram Micro compete against broad-based IT distributors such as TD SYNEX, and Arrow. There are a number of specialized competitors that focus on one market or product or a particular sector in which we also compete. Examples of such competitor types include Carahsoft in the public sector market; D&H Distributing, ADI, and Petra in consumer electronics; ScanSource and BlueStar in AIDC/POS products and Anixter in physical security products.

- **Provide Annual Sales for last 3 years broken out into the following categories:**

In the table below, please find below the total combined annual Public Sector Sales for Promark Technology and Ingram Micro for each the last three years broken out by Federal, higher education, K-12, state and local government, and non-profit sales.

US Public Sector Sales	FY 2022	FY 2021	FY 2020
Non-Profit	\$ 138,478,311.47	\$ 157,062,000.33	\$ 112,288,817.70
Higher Ed	\$ 588,071,053.85	\$ 553,443,380.99	\$ 512,614,128.27
K12	\$ 618,303,986.66	\$ 780,730,831.73	\$ 673,135,551.33
Federal	\$ 877,277,249.71	\$ 821,472,490.55	\$ 954,216,342.08
Local	\$ 6,539,525.85	\$ 7,443,629.26	\$ 10,229,341.57
State	\$ 788,675,829.56	\$ 697,402,127.97	\$ 792,315,025.41

- **Provide the revenue that your organization anticipates each year for the first three (3) years of this agreement.**

Intentionally Redacted

- **What differentiates your company from competitors?**

As an Ingram Micro company, Promark reflects the strengths of our parent company. Ingram Micro's key strengths position it to deliver on its strategy to profitably grow and optimize its core technology solutions business while expanding and investing in higher margin advanced and specialty solutions and high value services. Ingram believes that the current technology industry generally favors large, financially-sound distributors that have broad product portfolios, economies of scale, strong business partner relationships and wide geographic reach. Ingram offers a broad range of products and services, providing a true "one-stop-shop" for its customers. Its breadth of product and solution offerings and wide range of business partners reduce the risks from volatility and demand fluctuations in a single market, vendor or product segment.

Our key strengths include:

- **Strong Working Capital Management and a Solid Financial Position.** Ingram Micro has consistently demonstrated strong working capital management. Maintaining a close relationship with resellers enables Ingram to monitor demand to optimize its investment in inventory, while preserving customer fill rates and service levels.
 - **Commitment to Diversification.** Ingram Micro believes that its ability to execute on new initiatives, adapt to new business models and enter new geographic markets provides a competitive advantage by enabling it to capture opportunities and overcome the risks, volatility and demand fluctuations in a single market, vendor or product segment.
 - **Expanded Product Markets** — In recent years, Ingram has made a number of investments focused on augmenting its IT product distribution business through the global expansion of specialty product offerings and solutions, such as AIDC/POS, CE, data center, mobility, Cloud, and enterprise computing.
 - **Differentiated Service Offerings** — Ingram Micro believes that its service offerings provide a means to diversify our revenue stream while distinguishing us from our competitors. Ingram's logistics services enable it to earn fees from technology and mobility suppliers that choose to bypass distribution and sell directly to resellers and/or end-users. Ingram is focused on building our presence in those product categories and solutions that will benefit from key growth trends, such as the continuing technology shift to mobile devices and the need for enterprise computing solutions to handle the growing data center market.
- **Describe how your company will market this contract if awarded.**

Promark has a vast amount of Public Sector experience working within the IT industry and holding several different Federal and SLED contract vehicles. As a distributor of IT products and services, Promark does not sell directly to end users or the government; therefore, we leverage our reseller and system integrator community to sell our manufacturers' products. As such, we look for contract vehicles, similar to the NCPA contract, which allow us to authorize our resellers to sell through the contract.

Promark will take a three-pronged marketing approach to effectively market this contract with the assistance from the Ingram Micro Public Sector Team:

1. Promark's Contract's Program
2. Internet Marketing, Collateral, and Training
3. Demand and Lead Generation

Contracts Program

Promark will leverage the NCPA Contract as the base vehicle to support our SLED Contract Program. The SLED Contract Program will be designed to help empower our resellers, allowing partners to market and sell opportunities using the NCPA Contract. The

program will be designed to provide everything an Authorized NCPA Contract Partner will need to be successful when leveraging the contract including: training, marketing collateral, targeted customers, targeted events, and much more. We have already identified some of our most responsive and experienced SLED resellers located across the US. These partners who we chose will work with the NCPA Team to become authorized on the contract and will be the initial wave of resellers to leverage the contract. Throughout the course of the contract, Promark will continue to promote the program and identify additional resellers to support the contract across the US.

Promark will leverage the resources of both Promark and Ingram Micro's Marketing Teams to support the remaining two prongs.

Internet Marketing, Collateral & Training

- We have created an internet presence for the NCPA Contract and Promark SLED Contract Program, by continually updating our website with easily identifiable and current contract information on main page.
- We have created Contract and Program collateral to support the promotion of the Contract both internally for sales associates and externally for reseller partners and end customers.
- We have promoted and will continue to promote this contract on our social media outlets such as LinkedIn and Facebook.
- We have created a landing page for our internal team that will have all up-to-date contract information that will be easily accessible. This page will hold all events and material that may be needed for future opportunities.
- We have created a clickable image that will lead customers to our dedicated page and promote that on company email signatures.
- We have held and will continue to hold ongoing reseller, customer, and internal recruitment and training activities.

Demand & Lead Generation

- We have and will continue to participate in end user events to market our contract.
- We have and will continue to push demand generation events to our outside community to raise awareness of our participation on this contract and offer it as an alternative to current solutions.
- We have and will continue to work with the Authorized Reseller partners to create host end user lead generation events.
- We have and will continue to leverage both Promark/Ingram and Reseller Business Intelligence to mine for opportunities.

With a consistent mix of the above actions Promark will continue to market this contract day to day to increase awareness and drive business.

- **Describe how you intend to introduce NCPA to your company.**

As a wholly owned company of Ingram Micro, Promark is equipped with not only its own nationwide sales team, but also a much greater reach through the dedicated SLED teams

within Ingram Micro. Promark will partner with Ingram Micro Public Sector Sales Executives to recruit resellers and advance messaging around the NCPA Contract. Those sales teams with account ownership of our NCPA Dealers will have a more targeted focus, as they will be the primary points of contact for the partners.

Promark has created a dedicated on-boarding process for the NCPA contract. The on-boarding process will include training webinars and on-site meetings to introduce the NCPA contract and provide guidance for internal functionality as it relates to marketing, quoting, and ordering through this contract. Standards will be created, documented and communicated to all sales teams to create a baseline approach to NCPA transactions. The marketing plan described above will also be incorporated into the on-boarding process.

- **Describe your firm's capabilities and functionality of your on-line catalog / ordering website.**

Ingram Micro Xvantage is an intelligent digital platform built for the IT ecosystem, where you can discover, learn, purchase, and manage technology and cloud solutions in a single pane of glass. Ingram Micro has a robust web-based catalog and ordering tool accessible for our resellers, dealers and systems integrators through Xvantage (ingrammicro.com) in the United States. This site is available 24 hours per day. The resellers, dealers and systems integrators utilizing Xvantage (ingrammicro.com) can expect the following benefits:

- Full catalog of proposed products and pricing.
- Ability to search for real time pricing and availability of products by manufacturer part number, Ingram Micro part number, or keyword search.
- Easy access to complete technical and product notes, as provided by the manufacturer.
- Easy access to add-on products and accessories, as provided by the manufacturer.
- End user specific pricing to include Federal, Local, and State
- View and create quotes.
- Build carts and place orders, or use the Quick Order feature.
- Drop down freight option selections, including pricing information.
- Ability to subscribe to reseller and end-user order status email notifications for requests such as order confirmation, pre-shipment updates, and shipped order details.
- Reporting for shipped and open orders.
- Easy access to PO/order information via order number, reseller PO, SKU attributes, shipment date and a variety of other parameters.
- View and act on renewals and subscriptions
- One-click tracking on most orders (carrier dependent).
- Ability to view serial numbers on shipped orders.
- E-Invoicing functionality allows customers to review, print, and download their invoices.
- Ability to submit and search statuses for RMAs and Claims.
- Learn about available services such as Financial, Licensing, and many more.
- View available solutions for Servers, Storage, Cloud, and others.

- **Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)**

As part of our ISO 9001:2015 certification, the Ingram Micro Customer Service department operates under established and documented policies and procedures to ensure the highest level of service. Our representatives are prepared to assist our reseller customers on all inquiries including:

- Product return requests using vendor return guidelines
- Carrier tracking
- Lost/damaged carrier claim investigations
- Shipping inquiries
- Returns and claims status
- Return discrepancy investigations

To guarantee accurate and timely service, Ingram Micro provides all associates with training programs, automated software tools and quality assurance reviews—things we consider fundamentals, not luxuries. In addition, we perform tracking and quality checks on all internal activities to ensure that we recognize and address opportunities for continuous improvement. We also establish strong carrier relationships and communication channels, including on-site representatives, to streamline the process of resolving shipping issues.

Ingram Micro's Customer Service group provides coverage from 8:00 am to 8:00 pm Eastern Time and our Xvantage Platform allows resellers 24 x 7 access to customer service information including auto returns, ability to start all requests online, shipping label requests for eligible RMAs, and the ability to attach supporting documents.

- **Green Initiatives**

As our business grows, we want to make sure we minimize our impact on the Earth's climate. We are taking every step we can to implement innovative and responsible environmental practices throughout NCPA to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.

Since formalizing our global Corporate Social Responsibility (CSR) initiative – of which Environmental Stewardship is an important part - in 2016, our focus has been on raising awareness internally, while building the systems and processes that will allow us to manage the program across hundreds of facilities in 59 countries. We still have work ahead of us to ensure the timeliness and accuracy of our global non-financial performance data, but we have made significant process. Over the past five years, we have increased renewable energy consumption, decreased solid waste generation, reduced greenhouse gas emissions intensity and continued to invest in the repair, refurbishment and recycling of used electronics.

Through 2022, we prioritized the following areas of corporate responsibility:

- Internal programs to expand CSR competency
- Continued focus on climate action and waste reduction
- Alignment with UN Sustainable Development Goals that are relevant to our impacts and activities

Environmental Stewardship - With over 27,000 associates and 20 million square feet of building space worldwide, Ingram Micro's operations generate direct environmental impacts from greenhouse gas emissions, material consumption and waste generation, as well as indirect impacts from land use. In addition, our supply chain partners provide everything from energy and freight services to technology hardware and warehousing equipment, causing significant additional impacts.

Environmental Management Systems - Ingram Micro's Environmental Stewardship policy requires facilities to implement site-specific environmental management systems (EMS) in alignment with the ISO 14001 framework. (Many of our facilities are ISO- 14001 certified.) Where feasible, and according to business need, facilities are encouraged to pursue EMS certification. Our priority is to develop systems that are effectively minimizing our environmental impact through leadership involvement, risk-based planning, collaboration, operationalizing impact reduction, performance measurement and continuous improvement.

These included:

- Building efficiency projects, including lighting retrofits and installation of water-saving and energy efficient equipment
- Continuous improvement of processes, including the integration of LEAN principles
- Leasing space in certified sustainable buildings, when feasible
- Optimization, reuse, and recycling of packaging materials

Ingram Micro's Green Initiative can be found in **Appendix 5- Ingram Micro Green Initiative & Environmental Reporting**

- **Anti-Discrimination Policy (if applicable)**

Describe your organizations' anti-discrimination policy.

Ingram Micro's Inclusion and Equal Employment Statement can be found in **Appendix 4 - HR Anti-discrimination Statement**

- **Vendor Certifications (if applicable)**

Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to, licenses, registrations, or certifications. Certifications can include M/WBE, HUB, and manufacturer certifications for sales and service.

Secure Supply Chain Certifications (C-TPAT II and TAPA Certifications)

As a global distributor of information technology products and an industry leader in supply chain management and logistics, Ingram Micro provides diverse, complete, and precise processes to ship, track, and manage information technology (IT) products. Our ability to manage the supply chain process, protect against counterfeit and tainted goods, and provide the broadest possible spectrum of technology products and services is unmatched by any broad-line distributor in the world today. Ingram Micro understands and tracks various legislative controls which demonstrate the recent trend toward reducing the risks of counterfeit, tainted, unauthorized, substitute or illicit products, and their associated entry into

the technology landscape. The depth of these initiatives shows that the components of supply chain security for information technology systems extends well beyond the processes of acquiring systems from authorized sources and the associated logistics of transporting those systems.

Supply Chain security is a priority at Ingram Micro. Examples of this include our Customs Trade Partnership Against Terrorism (C-TPAT) Tier 2 certification, our security practices at our Advanced Logistics Centers, Master Service Agreements with our carriers stipulating rigorous security measures, Ingram Micro's Information Security ISO 27001 certification, and our participation in TAPA.

Customs Trade Partnership Against Terrorism (C-TPAT) is a U.S. Customs and Border Protection (CBP) initiative designed to strengthen and improve the international supply chain and U.S. border security. This joint government-business initiative is designed to build cooperative relationships that strengthen their overall supply chain and border security. C-TPAT certification is issued to participants only after meeting very strict government criteria. Ingram Micro is Tier 2 certified (Level 1 is the lowest certification, 3 is the highest). The supply chain is defined from the point of origin (manufacturer/supplier/vendor) through the point of distribution. C-TPAT Minimum Security Requirements include but are not limited to Business Partner Selection, Container Security, Physical Access Controls, Personnel Security, Procedural Security, Physical Security, Security Training and Threat Awareness and Information Technology (IT) Security. Ingram Micro has passed two re-certification audits by U.S. Customs since achieving Tier 2 status.

Ingram Micro and our vendor partners are engaged in supply chain security at a level that would be expected for technology-related products. Along with our C-TPAT tier 2 certification, 98% of our top 50 vendor partners that supply physical products are C-TPAT certified as well. The Transported Asset Protection Association (TAPA) is another area where Ingram Micro's facilities are either TAPA-certified or are TAPA-compliant and are in the process of being certified. Many of our vendor partners are also either TAPA certified or compliant.

Ingram Micro generally adheres to, and often exceeds, the various best practices and standards as outlined and published by the National Institute of Standards and Technology (NIST), the Customs-Trade Partnership Against Terrorism (C-TPAT), the National Defense Authorization Act (NDAA), Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIGs), National Security Agency (NSA) Systems and Network Analysis Center (SNAC) guides, and various other domestic and international standards. The processes, methodologies, procedures, and corporate policies which protect the integrity of the supply chain have become an integral part of our operations, and span organizationally through the following integrated business divisions:

- Logistics, Transportation and Warehouse Management
- Risk Management
- Operations Management
- Information Security
- Vendor Management
- Sales Management
- Human Resources

These groups are collectively responsible for Ingram Micro's conformance with industry best practices, certifications, audits, and the application of supply chain security models. These best practices are a part of ISO/IEC Standards, certifications, internal audits, third-party audits and other certifications. Ingram Micro's Supply Chain Risk Management process includes evaluating, understanding, reducing, and mitigating risks in each element of the supply chain. Using the NIST IR 7622 as a frame of reference, Ingram Micro adheres to the following industry best practices:

- Uniquely identifies the Supply Chain Elements, Processes, and Participants.
- Limits Access and Exposure within the Supply Chain.
- Establishes and Maintains the Provenance of Elements, Processes, Tools, and Data.
- Shares Information within Strict Limits.
- Performs Supply Chain Risk Management Awareness and Training.
- Uses Defensive Design for Systems, Elements, and Processes.
- Performs Continuous Integrator Review.
- Strengthens Delivery Mechanisms.
- Assures Sustainment Activities and Processes.
- Manages Disposal and Final Disposition Activities throughout the System or Element Life Cycle.

To manage risks, Ingram Micro maintains our own Risk Management Information System which tracks, manages, and reports on business, operations, security, information, transportation, logistics, and claims associated with supply chain risks. This Risk Management Information System is one component of the management of risk and the associated policies and procedures that are implemented globally by Ingram Micro. The management of risk is reviewed regularly and is formally a part of our annual strategic planning process conducted at the executive level. Ingram Micro's strategic risks are reviewed by our executive committee. Of the various parts of our supply chain management initiative, risk activities are tracked and monitored throughout the incumbent audited processes.

Transported Asset Protection Association (TAPA) is a consortium of international manufacturers, logistics providers, carriers, law enforcement authorities and other stakeholders with the common goal of reducing losses in the supply chain. TAPA has more than 600 members in the Americas, Europe, the Middle East, Africa, and Asia. Ingram Micro is either TAPA certified or TAPA compliant in all of our North American Advanced Logistics Centers. The security requirements of TAPA have been approved worldwide as the industry standard for cargo operations and transportation security. TAPA is the industry leader in protection against high-value theft targeted (HVTT) and risk reduction of criminal activity in the supply chain.

TAPA certification includes, but is not limited to, perimeter security, electronic security, process controls, background checks, documented security standards, and documented training programs. Ingram Micro Global Security Strategy, in partnership with TAPA, includes TAPA certifications that drive standardized behaviors across all regions. TAPA is a key element for the development of standardized global Security Education and Awareness training. TAPA certifications/audits provide business leaders with roadmaps leading to changes that strengthen existing security profiles. TAPA certification further solidifies Ingram Micro's competitive advantage for winning and maintaining business.

Among the attributes or contractual obligations that Ingram Micro requires from our carrier

partners in their Master Service Agreement are gated yards, closed circuit TV monitors, employee.

ISO Certifications

ISO 9001-2015 – Both Ingram Micro and Promark are ISO 9001 certified. Given Ingram Micro brought in over \$50 billion U.S. dollars in sales globally in 2022, our Advanced Logistics Centers (ALCs) are designed to protect our inventory, facilities, and associates. These measures include, but are not limited to, 24x7 security personnel coverage, digitally recorded camera systems (interior and exterior as well as 360-degree dock and floor cameras), 24x7 alarm and detection systems, and a dock-lock system that secures trailers to the building. Ingram Micro also employs appropriate integration with operational processes including Clean In / Clean Out Procedure at Metal Detectors, carrier driver check-in and escort and dock door controls. As both Promark and Ingram are ISO 9001-2015-certified, process and product audits are also part of our controls.

ISO/IEC 27001 - Ingram Micro is the only global broad-line distributor which holds the ISO/IEC 27001 certification. This standard covers the information Security Management System for the critical Federal capabilities information systems in our Santa Ana California Worldwide Headquarters; North American Advanced Logistics Centers; Ingram Micro offices in Europe, the Middle East and Africa (EMEA); and world-wide distribution centers of Ingram Micro Inc. ISO/IEC 27001 formally specifies a management system that is intended to bring information security under explicit management control. Being a formal specification means that it mandates specific requirements. Organizations that have adopted ISO/IEC 27001 can therefore be formally audited and certified compliant with the standard.

Ingram Micro's ISO/IEC 27001 certification applies to the following components of our business:

1. Security policy - management direction
2. Organization of information security - governance of information security
3. Asset management - inventory and classification of information assets
4. Human resources security - security aspects for employees joining, moving and leaving an organization
5. Physical and environmental security - protection of the computer facilities
6. Communications and operations management - management of technical security controls in systems and networks
7. Access control - restriction of access rights to networks, systems, applications, functions and data
8. Information systems acquisition, development and maintenance - building security into applications
9. Information security incident management - anticipating and responding appropriately to information security breaches
10. Business continuity management - protecting, maintaining and recovering business-critical processes and systems
11. Compliance - ensuring conformance with information security policies, standards, laws and regulations

-
- Additional Agreements (if applicable)
Provide a copy of additional agreements.

Ingram Micro's Vendor Warranty and License Agreements can be found in **Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements**

TAB 5 - PRODUCTS AND SERVICES

- Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs.

Promark will perform and provide the required products and / or services under the terms of the agreement.

- **Warranty**

Proposal should address the following warranty information:

- Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
- Availability of replacement parts
- Life expectancy of equipment under normal use
- Detailed information as to proposed return policy on all equipment

Promark will provide the required warranty information. Vendor warranties for the initial set of vendors is provided in **Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements.**

- **Products**

Vendor shall provide equipment, materials and products that are new unless otherwise specified, of good quality and free of defects.

Acknowledged and affirmed.

- **Construction**

Vendor shall perform services in a good and workmanlike manner and in accordance with industry standards for the service provided.

Acknowledged and affirmed.

The following is a list of suggested (but not limited to) Advanced Technology Solutions Aggregator categories. List all categories along with manufacturer that you are responding with:

- Data Center
- Data Storage
- Cyber Security
- Cloud Services
- Networking
- Telecommunication
- Mobility
- IOT
- Laptops / Notebooks / PDA's

- Desktop Computers
 - Servers
 - Software
 - Accessories
 - Battery Back-up / Power / Surge
 - Cables
 - Data Storage / Drives
 - Digital Imaging – Cameras / Scanner Keyboard / Mice / Input Devices
 - Memory / System Components
 - Office Equipment
 - Printers
 - Sound / Multimedia
 - Telecommunications Products
 - Video – Monitors / Cards / Projector
 - Interactive Whiteboards
 - DVD / Books / Music / Video
 - Services
 - Installs
 - Asset Management
 - Managed Services
 - Telecommunications
 - Product Configurations
 - Product Support
 - Warranty
 - Insurance
-
- **Manufacturer's Authorized Distributor letters should accompany each manufacturersproducts submitted on the proposal.**

The following pages contain manufacturers' authorized distributor letters for Promark for each of the initial manufacturers being proposed herein. These include:, Arctic Wolf, Cradlepoint, Jabra, Lenovo, Nutanix, Rubrik, Scale Computing, Schneider Electric – APC, VMware.

This list is the initial wave of manufacturers that Promark has proposed to add to this contract. Once awarded the contract, Promark would work with NCPA to continue to add additional manufacturers from the broad line card of over 1,200 vendors from Promark and Ingram Micro. Our current NCPA Aggregator Contract has over 65 vendors currently on contract and our intention is to have them added to a new contract award.



11/6/2023

Region 14 Education Service Center
1850 Highway 351
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR
NATIONAL COOPERATIVE PURCHASING ALLIANCE

To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by Arctic Wolf Networks, Inc. ("Arctic Wolf") as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

If you have any questions, feel free to contact me.

Sincerely,

DocuSigned by:

A7766DEF3E54MAC
Steve Craig
Chief Sales Officer





AUTHORIZED RESELLER LETTER

Effective: November 8, 2023

To whom it may concern,

This letter is to **CERTIFY**, that **Promark Technology Inc. a wholly owned Ingram Micro company** is an **AUTHORIZED RESELLER** of Cradlepoint products and services for the United States.

For any assistance please contact:

Contact: Britteny Collins

Address: 1850 Highway 351 Abilene, Texas 79601

E-mail: brittenyc@promarktech.com

Web: www.promarktech.com

Phone: 240-280-8030

Promark Technology Inc. a wholly owned Ingram Micro company has the responsibility to promote, sell, relabel and offer technical assistance for the data communications & telecommunications networking equipment products offered by Cradlepoint. Authorized Resellers are not agents of Cradlepoint and are subject to change without advance notice.

If you have any questions, please do not hesitate to contact me.

Regards,

DocuSigned by:
Chris Cook
49D2619C40A64F8...

Christopher Cook | Global Partner & Distribution Operations Manager | Cradlepoint

1100 W. Idaho Street, Suite 8 | Boise, ID 83702

chris.cook@cradlepoint.com | <http://www.cradlepoint.com>





Region 14 Education Service Center
1850 Highway 351
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR
NATIONAL COOPERATIVE PURCHASING ALLIANCE

To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by GN Audio USA Inc. d/b/a Jabra as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

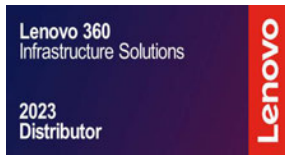
If you have any questions, feel free to contact me.

Sincerely,

DocuSigned by:

126D815B22024F1...
Kelly Nagel

President



03 November 2023

Brenda Cortes
Promark Technology Inc.Ingram Micro Inc.
10900 Pump House Rd
20701-1207
United States

1213384612/52-0940687

This notification is to confirm Promark Technology Inc.Ingram Micro Inc. is an authorized Lenovo Distributor located in United States. This authorization letter is valid until 31 March 2024. As a member of the Lenovo Partner Engage Program, Promark Technology Inc.Ingram Micro Inc. has earned:

Infrastructure Solutions Distribution Partner and is authorized to distribute all Infrastructure Solutions products, including but not limited to ThinkSystem and ThinkAgile server and storage, associated options, software, and services.

Please note that your status will be reviewed regularly, and any changes will be communicated with you by your local Channel Account Manager. If you have any questions, please feel free to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read "Rob Cato".

Rob Cato

Vice President, NA Channel
Lenovo North America ISO

November 6, 2023

Subject: Distributor Authorization Letter

To Whom It May Concern:

Nutanix is a global leader in cloud software and a pioneer in hyperconverged infrastructure solutions, making computing invisible anywhere. Organizations around the world use Nutanix software to leverage a single platform to manage any app at any location at any scale for their private, hybrid and multi-cloud environments. Nutanix sells its products through distributors and resellers.

This letter serves to confirm that as of the date of this letter, **Ingram Micro US**, is a **Champion Distributor** in the Nutanix Elevate Distributor Partner Program and is an authorized distributor for Nutanix in the **United States**. As such, **Ingram Micro US**, is approved to resell Nutanix products and services.

Sincerely,



Michelle Lamoreaux
Global Director of Partner Experience, Nutanix, Inc.



3495 Deer Creek Road
Palo Alto, CA 94304

November 15, 2023

RE: NCPA Advanced Technology Solutions Aggregator Contract 14-23

To Whom It May Concern,

The purpose of this letter is to confirm that Promark Technology, Inc. A wholly owned Ingram Micro Company (0018Y00002yRMhdQAG) is an authorized distributor of Rubrik products and services in the United States to private and public companies and government agencies. As such, Promark Technology, Inc. A wholly owned Ingram Micro Company is authorized to respond to the Solicitation 14-23 Advanced Technology Solutions Aggregator contract request.

Should you have any questions regarding this matter, please do not hesitate to contact GoForward@Rubrik.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Ghazal Asif". The signature is fluid and cursive, with the first name "Ghazal" being more prominent than the last name "Asif".

Ghazal Asif
VP Global Channels & Alliances at Rubrik



Scale Computing
525 S. Meridian - Suite 3E
Indianapolis, IN 46225
Tuesday, March 14, 2023

Region 14 Education Service Center
1850 Highway 351
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR NATIONAL COOPERATIVE PURCHASING ALLIANCE

Letter of Authorization

To Whom It May Concern,

This letter is to certify that Promark Technology, Inc., a wholly owned Ingram Micro company is an authorized Scale Computing Distributor. Promark Technology, Inc., a wholly owned Ingram Micro company is authorized to Distribute the entire Scale Computing product and services portfolio to customers throughout North America.

Authorized Reseller:

Promark Technology, Inc., a wholly owned Ingram Micro company
1759 Wehrle Drive
Williamsville, NY 14221
United States

If you have any questions in relation to this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kyle Fenske". The signature is written in a cursive, flowing style.

Kyle Fenske
Director of North American Channel
kfenske@scalecomputing.com
716.785.4877

Schneider Electric IT USA, Inc.
70 Mechanic Street
Foxboro, MA 02035
Tel: 508-543-8750

Promark
10900 Pump House Rd. Suite B
Annapolis Junction, MD 20701
USA

11/6/2023

To whom it may concern:

Schneider Electric IT USA, Inc. “formerly known as APC by Schneider Electric”, confirms that Promark is an authorized reseller of APC products. This authorization demonstrates their knowledge of APC products and validates their expertise to design, deploy and maintain customer networks. Promark is not authorized to perform services on behalf of APC.

Please contact me with any questions regarding this authorization.

Regards,



Samantha DeMagistris
Channel Programs Manager



November 8, 2023

Region 14 Education Service Center
1850 Highway 351
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR
NATIONAL COOPERATIVE PURCHASING ALLIANCE

To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by VMware, Inc. as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

If you have any questions, feel free to contact me.

Sincerely,



Melani Powell
Sr. Contracts Manager
mpowell@vmware.com

TAB 8 - VALUE ADDED PRODUCTS AND SERVICES

Include any additional products and/or services available that vendor currently performs in their normal course of business that is not included in the scope of the solicitation that you think will enhance and add value to this contract for Region 14 ESC and all NCPA participating entities.

Value Added Products and Services

Promark and Ingram Micro offer a wide array of channel enablement and professional services to our reseller customers, as illustrated and described in greater detail below.



Technology Practice Resources include resources that can assist in developing the knowledge base and capabilities of our reseller partners in the latest technology areas including:

- Networking
- Data Center
- Virtualization
- Storage
- Network Security
- Physical Security
- Mobility and Lifecycle Services
- UCC
- Data Capture/Point of Sale
- Digital Signage/PRO-AV
- Business & Consumer Solutions
- Cloud
- Internet of Things (IOT)
- Sourcing Solutions
- Emerging Vendor Initiative

Technical Support Services include:

- Pre-Sales Support
- Solution Design
- Technical Solution Engineers
- Technical Account Managers
- Business Transformation Center
- Partner Training/Boot Camps

Financing Options include:

- Net and Extended Terms
- Flooring Programs
- Leasing and Rental Programs
- End User Financing
- White Label Options
- TaaS

Field Deployable Resources include:

- Sales Account Executives
- Business Development Executives
- Category Leader Executives
- Technical Solution Engineers
- Field Credit Managers
- Technology Solution Experts

Logistical and Operational Support includes:

- Order and Project Management
- Custom Logistics/Warehousing
- Express Warehousing
- Global Fulfillment
- Partners Licensing Desk
- eCommerce Tools
- Government Contract Services
- RenewVue (Renewal Management)
- Xvantage Platform for quotes, orders, RMA's, tracking

Marketing Services include:

- Business Intelligence
- Agency Express
- Demand/Lead Generation
- Event Management
- Creative Services
- Call Campaigns
- Channel Communities

Professional and Training Services
includes:

- Assess | Design | Deploy | Manage | Dispose
- IM Link Partner Network
- IM Expert Services
- Ingram Micro Deployment Services
- Ingram Micro IT Asset Disposition
- Partner Technical Enablement
- Configuration and Integration Services
- Certification Road-mapping
- Training Services

Our partner communities and partner advisory boards foster loyalty to Promark and Ingram Micro. These communities and advisory boards include:

Trust X Alliance Affinity Groups: Affinity groups are peer groups (up to 20 companies) that are structured based on shared interests and business models to provide exclusive, high-value business meetings.

Trust X Alliance Mastermind Groups: Mastermind creates the opportunity for business owners and c-suite executives from organizations to have their business and personal goals reviewed in a trusted advisor / board of director like environment – leveraging the cumulative knowledge, education, peer accountability and experience of successful business leaders to help grow and scale your business.

SMB Alliance: SMB Alliance offers members access to valuable benefits and business-building resources that allow them to successfully compete without taking on additional overhead.

Advisory Council: The Trust X Alliance Advisory Council represents our three community stakeholders: members, vendors and Ingram Micro. Each region is represented by its Ingram Micro Trust X Alliance Leader, their Country President, as well as Ingram Micro executives. Members of the Ingram Micro Trust X Alliance Team also participate to give their input, hear feedback, create new programs and implement ideas to progress our community.

Ingram Micro Public-Sector Value-Add

In support of Promark and Ingram Micro public sector opportunities, Ingram Micro has a dedicated public-sector division, focusing on the overage, growth and development of our public sector focused solution and manufacturer partners. Partners range from the top system integrators and prime contractors to VARs holding strategic public-sector end-user relationships and designations. We are always recruiting new public-sector partners based on manufacturer input and requests, contract awards, relationships with key public-sector end users, clearances, and technology specialists to broaden our full solution offering to the public-sector markets. We have a very seasoned team of publicsector field sales executives, inside sales representatives, Program Managers, Business Development Executives and Sales leadership that bring a wealth of knowledge to this very important segment to Ingram Micro. Our experience allows us to help our manufacturer partners identify opportunity in the public-sector markets we serve and develop a strategy to succeed in this space.

Please refer to the information on the following pages about Ingram Micro's Public-Sector programs supporting Federal, State and Local Government business. Further information

about Ingram Micro's public-sector programs can also be found in our federal and state and local playbooks.

Federal Playbook Link:

[Federal_Public Sector Playbook_FINAL_230303.pdf](#)

State/ Local Playbook Link:

[Public Sector Education Playbook_Final_Updated.pdf](#)

TAB 9 - REQUIRED DOCUMENTS

- Federal Funds Certifications
- Clean Air and Water Act & Debarment Notice
- Contractors Requirements
- Required Clauses for Federal Assistance by FTA
- Federal Required Signatures
- Antitrust Certification Statements Texas Government Code § 2155.005
- State Notice Addendum

Promark acknowledges and accepts responsibility for the requirements addressed in each of the documents listed above.

FEDERAL FUNDS CERTIFICATIONS

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency and Offeror reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

- Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- Pursuant to Federal Rule I above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay

wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions
- Any Participating Agency will include any current and applicable prevailing wage determination in each issued solicitation and provide Offeror with any required documentation and/or forms that must be completed by Offeror to remain in compliance the applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Pursuant to Federal Rule I above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non- Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the Participating Agency

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- Pursuant to Federal Rule (I) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the

offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and all subrecipients shall certify and disclose accordingly.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Participating Agencies will clearly identify whether Buy America Provisions apply in any issued solicitation. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

CERTIFICATION OF ACCESS TO RECORDS

Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any non-financial documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents. This right of access will last only as long as the records are retained.

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

CLEAN AIR AND WATER ACT AND DEBARMENT NOTICE

By the signature below (Under Federal Required Signatures), I, the Vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

I hereby further certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations.

CONTRACTOR REQUIREMENTS

Contractor Certification

Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statutes of the states it is will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The offeror complies and maintains compliance with the appropriate statutes It requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the NCPA Participating entities in which work is being performed.

Fingerprint & Background Checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The offeror shall comply with fingerprinting requirements In accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed.

Business Operations in Sudan, Iran

In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

REQUIRED CLAUSES FOR FEDERAL ASSISTANCE PROVIDED BY FTA

ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

- a) Maintain all non-financial books, records, accounts and reports required under this Contract for a period of not less than two (2) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the FTA Administrator, the U.S. DOT Office of the Inspector General, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- b) Permit any of the foregoing parties to inspect all non-financial work, materials, and other data and records that pertain to the Project, and to audit the non-financial books, records, and accounts that pertain to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination. The right of access detailed in this section continues only as long as the records are retained.

FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts.

CIVIL RIGHTS / TITLE VI REQUIREMENTS

- 1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other applicable implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.
- 2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:
 - a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal

statutes, executive orders, regulations, and Federal policies that may affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.

- b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.
 - c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.
 - d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation of this Civil Rights clause.
- 3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative

to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.

- 4) **Sanctions of Non-Compliance.** In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS PARTICIPATION

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

- 1) **Non-Discrimination Assurances.** Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).
- 2) **Prompt Payment.** Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of public agency.
- 3) **DBE Program.** In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract

work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, listed directly or by reference in the Contract between Public Agency and the FTA, and those applicable regulatory and procedural updates that are communicated to Contractor by Public Agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT and applicable to the scope of a particular Contract awarded to Contractor by a Public Agency as a result of solicitation, as set forth in the most current FTA Circular 4220.1F, published February 8th, 2016, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to knowingly perform any act, knowingly fail to perform any act, or refuse to comply with any reasonable public agency requests that would directly cause public agency to be in violation of the FTA terms and conditions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms, to the best of its knowledge, the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

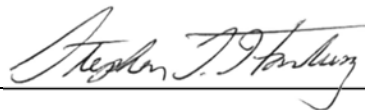
FEDERAL REQUIRED SIGNATURES

Offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted in the pages above. It is further acknowledged that offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances as applicable.

Offeror Promark Technology, Inc.

Address 10900 Pump House Road, Suite B

City/State/Zip Annapolis Junction, MD 20701

Authorized Signature 

Date November 14, 2023

ANTITRUST CERTIFICATION STATEMENTS
TEXAS GOVERNMENT CODE § 2155.005

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law; and

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company Name Promark Technology, Inc.

Address 10900 Pump House Road, Suite B

City/State/Zip Annapolis Junction, MD 20701

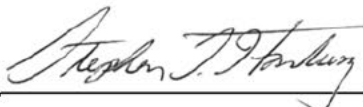
Telephone Number 800.634.0255

Fax Number 301.725.7869

Email Address toddh@promarktech.com

Printed Name Stephen T. Hartung

Title Director

Authorized Signature 

STATE NOTICE ADDENDUM

The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/State_and_Territories.shtml

<https://www.usa.gov/local-governments>

APPENDICES

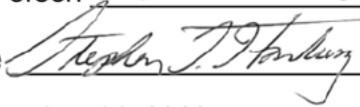
Appendix 1 – Signed Contract Addendum 1

RECEIPT OF ADDENDUM NO. 1 ACKNOWLEDGEMENT

Offeror shall acknowledge this addendum by signing below and include it in their response.

Company Name Promark Technology, Inc.

Contact Person Stephen T. Hartung

Signature 

Date November 14, 2023

Appendix 2 – Exception List for contract Terms and Conditions & Privilege Confidential Information Request

Promark requests the following Exceptions to the Terms and Conditions of the Contract:

Agreed

- Page 3 Funding out modification requested
Any/all contracts exceeding one (1) year shall include a "funding out"/"non-appropriation" clause as mutually agreed to by the parties. A contract for the acquisition of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

If (a) sufficient funds are not budgeted or appropriated and budgeted by Public Agency's governing body in any fiscal period for payment amounts or other costs and fees and (b) Public Agency has exhausted all funds legally available for such payment amounts or other costs and fees due under the contract, then the Public Agency, upon reasonable written notice to the vendor or its affiliate, retains the right to terminate the contract as of the last day of the Public Agency's fiscal period for which funds for the payment amounts are available at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the Public Agency to obtain appropriate funds for payment of the contract and to only place orders for which funding is available and to pay vendor for products delivered and services performed.

Agreed

- Page 3 Shipments request following modification - The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date.

Agreed

- Page 4 Payments Section – Request for authorized resellers to be able to receive payments from end customers.

Agreed

- Page 5 Deliveries – Request that Expedited, special handling requirements/requests will be allowed to incur a shipping fee. Large/Oversized products are subject to Freight charges.

Appendix 3 – Promark Authorized NCPA Dealer List

Company Name	Address	City	State	ZIP
2UTEC LLC	428 S MAIN ST STE 107	N SYRACUSE	NY	13212-2896
5S Technologies	121 Edinburgh South Drive, Suite 205	Cary	NC	54301
ACP Creativit	529 North Monroe	Green Bay	WI	54301
Accudata Systems, Inc.	10713 W SAM HOUSTON PKWY N STE 600	Houston	TX	77064
ACE SOLUTIONS LLC	12000 BLACKBERRY TER	NORTH POTOMAC	MD	20878
Acture Solutions, Inc.	1462 ERIE BLVD STE 207A	SCHENECTADY	NY	12305
ADVANCED NETWORK SYSTEMS INC	355 RIO RD W STE 201	CHARLOTTESVLE	VA	22906
ADVIZEX TECHNOLOGIES LLC	6480 ROCKSIDE WOODS BLVD S	INDEPENDENCE	OH	44131
AllConnected, Inc.	4514 Ish Drive	Simi Valley	CA	93063
All Covered a Konica Minolta Company	1051 E. Hillsdale Blvd., Ste. 510	Foster City	CA	94404
Alliance Technology Group LLC	7010 Hi Tech Drive	Hanover	MD	21076
Altura-Tech	2300 Glades Road, Suite 302E	BocaRaton	FL	33431
Applied Technology Services	11615 CROSSROADS CIR STE J	MIDDLE RIVER	MD	21220-2866
ARRAYA SOLUTIONS INC	518 TOWNSHIP LINE RD STE 250	BLUE BELL	PA	19422
Aspire Technology Partners LLC	25 James Way	Eatontown	NJ	7724
Avalon Technologies, Inc.	39533 WOODWARD AVE STE 125	BLOOMFLD HLS	MI	48304
CHOICE TECHNOLOGIES, LLC	45-225 WILLIAM HENRY RD	KANEOHE	HI	96744
CorTech, Inc dba B12 Government Solutions	13800 Coppermine Rd STE112	Herndon	VA	20171
B2 LLC	2533 SANTA ANA AVE	COSTA MESA	CA	92627
Baum Control Systems Inc. D/B/A The Computing Center	15 Thornwood Drive	Ithaca	NY	14850
BCTI	5112 Bobby Hicks Hwy.	Gray	TN	37615
Beck Computer Systems, Inc.	4067 HARDWICK ST # 540	LAKEWOOD	CA	90712
Better Direct	2425 E UNIVERSITY DR	Tempe	AZ	85281
BlueAlly Technology Solutions LLC	1255 Crescent Green Ste 300	Cary	NC	27518
Blue Chip Tek, Inc.	675 Campbell Technology Pky, Suite 100,	Campbell	CA	10058
Bluenet Technologies	13355 Noel Rd	Dallas	TX	75240
Broadway Typewriter dba AREY JONES EDUCATIONAL Solutio	1055 Sixth Ave Suite #101	San Diego	CA	92101
BUCKEYE TECHNOLOGY SOLUTIONS	20212 HEMPSTEAD RD BLDG 1	HOUSTON	TX	77065
Calian Corp	5355 W. Sam Houston Pkwy. N., Suite 390	Houston	TX	77041
Candoris Technologies	9 E. Main Street	Annville	PA	
Cambridge Computer	271 Waverley Oaks Rd Ste 301	Waltham	MA	
Carolina Advanced Digital, Inc.	1010 High House Rd., Ste. 300,	Cary	NC	27513
Carr Business Systems	500 COMMACK RD UNIT 110	COMMACK	NY	11725
Cherbonnier Mayer & Associates Inc. CMA	8180 YMCA PLAZA DR	BATON ROUGE	LA	70810
Chicksaw Telecom Inc.	5 N MCCORMICK ST	OKLAHOMA CITY	OK	73127
Choice Solutions LLC	7015 COLLEGE BLVD STE 300	OVERLAND PARK	KS	66211
Cloud Logic LLC	6539 Harrison Ave, #139	Cincinnati	OH	45247
Clutch Solutions	2152 S Vineyard Ave, Bld. 1, Ste 102	Mesa	AZ	85210
CNP Technologies, LLC	806 TYVOLA RD STE 102	CHARLOTTE	NC	28217
CodeBlue Technology LLC	5000 Monument Avenue	Richmond	VA	23230
ComDoc Inc.	8247 Pittsburg Ave BW	North Canton	OH	44720
COMMUNICATIONS CONSULTING INC	120 MOUNT PLEASANT RD	WARRENDALE	PA	15086
Compulink Technologies, Inc.	260 West 39th St, Suite 302	New York	NY	10018
Computer Design & Integration LLC	500 Fifth Avenue, Suite 1500	New York	NY	10110
Computer System Integrators	1401 Rte 52 Suite 100B	Fishkill	NY	12524
Computer Transition Services Inc (CTSI)	3223 S LOOP 289 STE 556	Lubbock	TX	79423
ComSource, Inc.	500 Plum Street, Suite 400	Syracuse	NY	13204
ConvergeOne	4290 E Brickell St	Ontario	CA	91761
Converged Communications dba Convergent Communications	116 RESEARCH DR STE 3363	BETHLEHEM	PA	18015
Converge Technology Solutions, LLC	130 Technology Parkway	Norcross	GA	30092
CONNECTED SOLUTIONS GROUP LLC	8529 MEADOWBRIDGE RD STE 300	MECHANICSVLLE	VA	23116
Connecticut Business Systems LLC	100 Great Meadow Rd. 3rd Fl,	Wethersfield	CT	6109
Conway Technology Group LLC.	10 Capital Street	NASHUA	NH	3063
Copper River Information Technology LLC	4501 SINGER CT STE 300	CHANTILLY	VA	20151
CoreBTS	10201 N Illinois St Suite 240	Indianapolis	IN	46290
CORPORATE COMPUTER SOLUTIONS INC	55 HALSTEAD AVE	HARRISON	NY	10528
Countertrade Products	7585 W 66th Ave	Arvada	CO	80003
CrossConnect Engineering	1155 KELLY JOHNSON BLVD STE 460	COLORADO SPGS	CO	80920
Cumberland Group, LLC	300 Galleria Parkway, Suite 1600	Atlanta	GA	30339
Custom Storage dva CSTOR	7975 N Dayden Rd A-105	Scottsdale	AZ	858058
Data Center Warehouse	23041 Avenida De La Carlota #200	Laguna Hills	CA	92653
Data Networks of America, Inc	216 Schilling Circle, Suite 104	Hunt Valley	MD	21031
Datec, Inc.	364 UPLAND DR	TUKWILA	WA	98188
DH Technologies, LLC	161 Fort Evans Drive, NE, Suite 250	Leesburg	VA	20176
DOF Creation	12604 RIVER BIRCH DR	RIVERVIEW	FL	33669
DIRSEC LLC	PO BOX 6247	BROOMFIELD	CO	80021
Distributed Technology Group, LLC	499 S WARREN ST STE 501	SYRACUSE	NY	13202
DPE Systems Inc.	120 LAKESIDE AVE STE 230	SEATTLE	WA	98122
Eagle Software, Inc. dba Eagle Technologies	124 Indiana Ave.	Salina	KS	67401
EDGE SOLUTIONS LLC	131 ROSWELL ST STE C101	ALPHARETTA	GA	30009
eGroup Holding Company	482 WANDO PARK BLVD	MT PLEASANT	SC	29464

Company Name	Address	City	State	ZIP
Encore Technology Group	141 Grace Drive	Easley	SC	2960
Enterprise Networking Solutions, Inc	2860 Gold Tailings Court	Rancho Cordova	Ca	95670
EOS Systems	800 Boylston Street	BOSTON	MA	2199
ePlus (formerly Innovative Systems & Solutions, Inc.)	2809 S. Lynnhaven Rd. Suite 250	Virginia Beach	VA	23452
Flagler Technologies	5295 Town Center Road Suite 201	Boca Raton	FL	33486
FirstLight Fiber Inc.	41 State Street	Albany	NY	12207
First Light Technologies	75 State Street, Suite 100 02109	Boston	MA	2109
Five Rivers IT Inc.	114 ESSEX ST STE 300	ROCHELLE PARK	NJ	7662
The Fruth Group Inc.	3220 E HARBOUR DR	PHOENIX	AZ	85034
FOCUS TECHNOLOGY SOLUTIONS INC	75 STATE ST STE 100	BOSTON	MA	2109
Fusion Digital	300 Main Street	East Rochester	NY	14445
GHA Associates	8998 E RAIN TREE DR	Scottsdale	AZ	85260
Golden Star Technology	12881 166th Street	Cerritos	CA	90703
Granite				
Granville Associates dba Vision Business Products	600 Logan St	Carnegie	PA	15106
GreenPages Inc.	33 Badgers Island W	Kittery	ME	3904
Groupware Technology, Inc.	541 Division Street,	Campbell	CA	95008
GuidePoint Security LLC	2201 Cooperative Way Suite 225	Herndon	VA	2017
Holmans USA	6201 JEFFERSON ST NE	ALBUQUERQUE	NM	87109
High Point Networks LLC	728 E Beaton Dr Suite 200	West Fargo	ND	58078
IT1SOURCE LLC	1860 W UNIVERSITY DR STE 100	TEMPE	AZ	85281
iCopy dba IBE Digital	11266 Monarch St Suite B	Garden Grove	CA	92841
IMPEX Technologies, Inc.	880 Apollo #315	El Segundo	CA	90245
InCare K12 Incare Technologies	600 LAKESHORE PKWY	BIRMINGHAM	AL	35209
INSPIRED TECHNOLOGIES	3058 HIGHLAND OAKS TER	TALLAHASSEE	FL	32301
In-Telecom Consulting	573 JF SMITH AVENUE	SLIDELL	LA	70460
InterDev, LLC	900 Holcomb Woods Pkwy	Roswell	GA	30076
Integra Business Center, Inc., d/b/a IntegraONE	7248 Tilghman Street, Suite 120	Allentown	PA	18106
Internetwork Services Inc. dba Internetwork Engineering	13777 Ballantyne Corporate Place, Suite 305	Charlotte	NC	28227
JNM DATA SOLUTIONS INC	5944 CORAL RIDGE DR # 244	Coral Springs	FL	33076
JRC Technologies LLC	304 Scottholm Ter,	Syracuse	NY	13224
Katalyst Network Group LLC	PO BOX 1443	HICKORY	NC	28603
Itsavvy LLC	313 South Rohlwing Road	Addison	IL	60101
Kelley Connect	2040 Milligan Way, Suite 304	Medford	OR	97030
KELLER SCHROEDER & ASSOC INC	4920 CARRIAGE DR	EVANSVILLE	IA	47715
KIS	48383 Fremont Blvd #122	Fremont	CA	94538
Kopesky Enterprises DBA Surelock	111 W CROGAN ST STE A	LAWRENCEVILLE	GA	30046
Layer 3 Communication	1528 FAIR RD	SIDNEY	OH	45365
Leslie Digital Imaging, LLC	50 Jericho Quadrangle	Jericho	NY	11753
Lewan and Associates	8530 Concord Center Dr #400	Englewood	CO	80112
Logicworks Systems Corp	155 AVENUE OF AMERICAS	NEW YORK	NY	10013
Lyon Micro	302 Eastern Blvd Ste 1077	Canandaigua	NY	14424
M.A. Polce Consulting Inc.	401 Phoenix Drive	Rome	NY	13441
Main Street Technologies	PO Box 4000 (allmail), 954 Bret Harte Road	Angels Camp	CA	95221
Mainline Information Systems	1700 SUMMIT LAKE DR	TALLAHASSEE	FL	32317
Marcum Technology LLC	10 Melville Park Road	Melville	NY	11747
MCNUTT CONSULTING SERVICES INC	104 JORDAN DR	GIBSON CITY	IL	60936
Mercury Networks of New York LLC	182 HILLRISE DR	PENFIELD	NY	14526
Mission Critical Systems	1347 E SAMPLE RD STE 3	POMPAÑO BEACH	FL	33064
Mobile Integrate Inc	1400 16TH ST STE 400	DENVER	CO	80202
Modal Networks, Inc.	5410 Del Rio Road	Sacramento	CA	95822
More Power Technology Group	1870 St Helens Street	St. Helens	OR	97051
MOVING ON IT SOLUTIONS LLC	3312 COBBS CT	PALM HARBOR	FL	34684
MVATION WORLDWIDE INC	70 GLEN ST STE 260	GLENCOVE	NY	11542
NE SYSTEMS INC	2655 1ST ST STE 250	Simi Valley	CA	93065
NetGain Technologies	2031 Georgetown Rd,	Lexington	KY	40511
Network Center Inc.	3487 UNIVERSITY DR S	FARGO	ND	58104
Network Performance	6605 Uptown BLVD., Suite #370	Albuquerque	NM	87110
Network Technologies LLC	3910 Caughey Rd., Ste 120	ERIE	PA	16506
NETWAY COMMUNICATIONS INC.	PO BOX 25472	ROCHESTER	NY	14625
NIC Partners	11981 Jack Benny Drive, Suite 103	Rancho Cucamonga	CA	91739
Nordisk Systems Inc a Converge Company	6400 SE Lake Road, STE 450	Portland	OR	97222
Nth Generation Computing	17055 CAMINO SAN BERNARDO	San Diego	CA	
Ocean Computer	90 MATAWAN RD STE 105	MATAWAN	NJ	07747-2624
OmniPro	5086 DIAMOND HEIGHTS BLVD	SAN FRANCISCO	CA	94131
Opkalla Inc.	4108 PARK RD STE 305	CHARLOTTE	NC	28209-2261
Optimal Technologies	1120 CORPORATE DR	AUBURN	NY	13021
opsZero	425 LIBERTY SHIP WAY APT 301	ALBANY	CA	94706
Pasack Data Services	200 Central Ave	Hawthorne	NJ	7506
PC SOLUTIONS & INTEGRATION	4937 SW 75 AVE,	Miami	FL	33155
PC University Distributors Inc.	99 W HAWTHORNE AVE STE 521	VALLEY STREAM	NY	11580

Company Name	Address	City	State	ZIP
People Driven Technology Inc.	6300 Venture Hills Blvd SW	Byron Center	MI	49315
PHILOTEK LLC	6000 LAKE FORREST DR STE 400	ATLANTA	GA	30328
Pillar Communications Inc.	3145 E CHANDLER BLVD STE 110	PHOENIX	AZ	85048
Pinnacle Business Solutions, Inc.	192 Richmond Hill Avenue, Suite 18	Stamford	CT	06902
Pinnacle Business Systems, Inc.	3824 S. Boulevard, Suite 200	Edmond	OK	73013
Pinnacle Network LLC	73888 Tallassee Highway	Wetumpka	AL	36092
Pivotalogic	6900 Wedgwood Rd N ste 460	Maple Grove	MN	55311
PNW Security, LLC	3925 NE Skidmore St	Portland	OR	97211
Presidio	8161 Maple Lawn Blvd., Suite 150	Fulton	MD	20759
PROACTIVE SOLUTIONS INC	5625 FOXRIDGE DR	MISSION	KS	66202
Procellis Technology, Inc.	1330 LAGOON AVE FL 4	MINNEAPOLIS	MN	55408
PROLOGIC ITS, LLC	106 NORTHPOINT PKWY BLDG 2	ACWORTH	GA	30102
R2 Unified Technologies, LLC	980 N Federal Hwy. STE 410	Boca Raton	FL	33066
Racom Business Inc.	250 Parkway Drive	Lincolnshire	IL	60069
Ramsys Storage Solutions	9853 Spruce Grove Way	South Jordan	UT	84095
Red River Technology LLC	21 Water Street Suite 500	Claremont	NH	3743
RMM	210 MCCLELLAN ST STE 100	WAUSAU	WI	
Right! Systems Inc.	2600 Willamette Drive NE Ste C	Lacey	WA	98516
Safari Micro	2185 W. Pecos Rd. Ste 9	Chandler	AZ	85224
Sanity Solutions	1720 S Bellaire St Suite #550	Denver	CO	80210
Saitech	42640 CHRISTY ST	FREMONT	CA	94538
Saxon Business Systems	14025 NW 60TH AVE	MIAMI LAKES	FL	33014
Sentinel Technologies	2550 WARRENVILLE RD	DOWNERS GROVE	IL	60515
SingleSource IT, LLC	4889 Sinclair Rd, Suite 103	Columbus	OH	43229
SMP	1020 John Street	West Henrietta	NY	
SJN Data Center LLC dba Encore Tech	4620 Wesley Ave	Cincinnati	OH	45212
SOCCOUR SOLUTIONS	2745 DALLAS PKWY STE 450	PLANO	TX	75093
Softchoice	314 W Superior St Suite 400	Chicago	IL	60654
Softnet Solutions	940 Hamlin Court	Sunnyvale	CA	94089
Solid Border, Inc.	1806 TURNMILL ST	SAN ANTONIO	TX	78248
Spinecube	264 CENTRAL AVE STE 2	JERSEY CITY	NJ	7307
Starlight Technology	15940 Austin St	Ham Lake	MN	55304
Sterling Computers	303 Centennial Drive 57049	North Sioux City	SD	57049
Stewart a Xerox Company	6000 Irwin Road	Mount Royal	NJ	8054
STRUCTURED COMMUNICATION SYS INC	2901 SE 97th Avenue, Suite 400	Clackamas	OR	
Synergy IT Solutions	7871 Lehigh Crossing #1	Victor	NY	14564
TEC COMMUNICATIONS INC	20234 DETROIT RD	ROCKY RIVER	OH	44116
Technology Integration Group	10620 Treena Street	San Diego	CA	92131
Tec-Refresh, Inc.	800 North Haven Avenue, Suite 250	Ontario	CA	91764
Tech Orchard LLC	5110 W 164TH TER STE 100	OVERLAND PARK	KS	66085
Tego Data Systems LLC	1801 Glenwood Ave., #3,	Raleigh	NC	27608
TekLinks dba C Spire Business	201 Summit Parkway	Birmingham	AL	35209
TELETRONICS SERVICES, INC.dba TTX	22550 ASCOA CT	STRONGSVILLE	OH	44149
Tensus Technology	7521 PAULA DR # 260056	TAMPA	FL	33685
Thomas Consultants, Inc.	4140 E. Raines Road	Memphis	TN	38118
TOTAL COMMUNICATIONS INC	333 BURNHAM ST	EAST HARTFORD	CT	6108
Trinity 3	650 PELHAM BLVD STE 600	SAINT PAUL	MN	55114
TSG Server & Storage, Inc	855 Village Center Drive #344, St.	St. Paul	MN	55127-3016
Unique Digital	5151 Belt Line Road Ste. #510	Dallas	TX	75254
Unistar-Sparco Computers, Inc.	7089 Ryburn Drive,	Millington	TN	38053
Valcom Salt Lake City LLC	3520 South 300 West	Salt Lake City	UT	84115
vCore Technology Partners LLC	1355 N Scottsdale Road #140	Scottsdale	AZ	85
VDA LABS LLC	5020 E BELTLINE AVE NE STE 205	GRAND RAPIDS	MI	49525
VectorUSA	20917 HIGGINS CT	TORRANCE	CA	90501
verCloud	1017 El Camino Real	Redwood	CA	94063
Vertikal6, Inc.	30 Service Ave	Warwick	RI	2860
Vision Business Product	8540 Cinderbed Rd., Suite 100,	Newington	VA	22122
Vivacity Tech	641 FAIRVIEW AVE N STE 150	SAINT PAUL	MN	55104
VPLS Solutions, LLC	1744 W Katella Ave Ste 250	Orange	CA	92867
Wachter Technology Solutions	9000 Commerce Parkway	MT. Laurel	NJ	8054
Waypoint Business Solutions, LLC	2113 Woodston Drive	Round Rock	TX	78681
Waypoint Government Solutions LLC	2114 Woodston Drive	Round Rock	TX	78681
Winslow Technology Group, LLC	303 Wyman Street, Suite 210	Waltham	MA	2451
WrightCore	725 Cool Springs Blvd, Suite 420	Franklin	TN	37067
XBS a Xerox Company	10690 John Knight	Montgomery	AL	36117
XTEK	1721 Westbelt Dr	Columbus	OH	43778
Y & S TECHNOLOGIES INC	383 KINGSTON AVE STE 357	BROOKLYN	NY	11213
Yeo & Yeo Computer Consulting, LLC	5300 BAY RD STE 200	SAGINAW	MI	48604-3652
Zeno Office Solutions, Inc.	8701 FLORIDA MINING BLVD	TAMPA	FL	33634
ZIVARO INC	3900 E MEXICO AVE STE 1000	DENVER	CO	80210

Appendix 4- HR Anti-discrimination Statement

Inclusion and equal employment opportunity

You, along with every other Ingram Micro associate, represent a talented and diverse workforce. Along with diversity, inclusion is a concept that is fundamental to our competitive success. A key element to realizing our full potential is our long-standing commitment to equal employment opportunity.

The company's leadership demonstrates our commitment to equal employment opportunity through various ways, including but not limited to signing onto the United Nations Universal Declaration of Human Rights, maintenance of Affirmative Action programs and by organizing company-wide and local diversity and inclusion programs at our workplaces around the world and in communities in which we operate and serve.

The company will accord equal employment opportunities to qualified individuals in all personnel practices, including, but not limited to, recruitment, selection, promotion, training, tuition assistance,

compensation, benefits, transfer, social and recreational programs, and termination. Our policies and practices prohibit unlawful discrimination based upon race, color, ethnicity, religion, creed, sex (including pregnancy, childbirth or related medical conditions), national origin, immigration status, ancestry, age, marital status, protected veteran status, military service, disability, medical condition, genetic information, sexual orientation, gender identity, gender expression, parental status, political affiliation or any other basis prohibited under federal, state or local laws. Applicants, associates, independent contractors, vendors and others with whom we do business will not be subjected to harassment,



Appendix 5 – Ingram Micro Green Initiative & Environmental Reporting

Environmental



At Ingram Micro, we deliver the promise of technology and strive to do this in a responsible way that safeguards the planet for future generations. We recognize the environmental impacts of the products we distribute and are committed to implementing international standards and best practices within our own operations while working with our supply chain partners to do the same. With an operational footprint that spans 61 countries, Ingram Micro is committed to environmental stewardship. From our bold *10 to Zero* initiative to achieve zero greenhouse gas (GHG) emissions and zero waste in our operations by 2030, to continuously pursuing sustainable solutions for our partners, we are helping pave the path toward a regenerative future.



Our Approach



At Ingram Micro, we strive to reduce our environmental footprint by monitoring and tracking our environmental impact, setting context-and-risk-based goals, optimizing our operations, and driving and recognizing outstanding environmental stewardship.

In this report, we have included the most recent annual data showing our emissions, energy use, transportation activities, waste generation, materials use, and water use, as well as our progress toward our updated environmental goals. We also highlight key initiatives and examples of how we are working toward more sustainable ways of doing business.

Our approach to environmental stewardship matured significantly in 2022 as we began a transition from our historical method for collecting environmental data, which relied on monthly manual data entry from dozens of global associates, to an automated process that pulls environmental data directly from utility and service

provider invoices, providing faster and more accurate results. Our environmental sustainability team has also been working to gain full visibility to all operations, confirm associated environmental data sources, and solidify the process for ongoing measurement. As a result, we believe our 2022 data set is the most complete in company history. A large majority of 2022 data is from direct sources, such as utility invoices.

Where such data was missing, or incomplete, Ingram Micro used global standards, such as the GHG Protocol to make good-faith estimates to close data gaps. Please note also that our data verification and validation for calendar year 2022 is still ongoing as of the publication of this report.

It is also important to note that Ingram Micro's operational portfolio changed significantly during 2022, with a large divestiture and several real estate optimization projects taking place during the year. At the start of 2022, Ingram Micro's real estate portfolio included 23.5 million square feet of warehouse and office space. At the end of 2022, Ingram Micro's portfolio was 13.2 million square feet; 11.1 million of which was at its 134 logistics and service centers and 2.1 million at office locations. The significant footprint reduction of more than 10 million square feet led to changes in our environmental data, making it difficult to compare our previously reported data for calendar year 2021 to our 2022 data.

2022 Highlights

- Launched *IngramMicroPlanetary*, our dedicated program for environmental sustainability, and our 10 to Zero goals to achieve zero greenhouse gas emissions and zero waste in our operations by 2030.
- Completed our first full Scope 3 inventory as part of our 2021 reporting and identified that Scope 3 emissions make up more than 99% of our total emissions.
- Submitted a commitment letter to set company-wide emissions reductions targets in line with climate science through the Science Based Targets initiative within the next two years.
- Updated our [Environmental Stewardship Policy](#);
- Enhanced U.S. Waste Compliance Program and launched "Know Where to Throw" campaign and training for all U.S. associates.
- Began phase-out of plastic mailers and committed to complete this transition by the end of 2023.
- Implemented a new process to improve global environmental data collection.

Environmental Stewardship

In 2022, we announced ambitious goals to achieve two major environmental operational milestones—zero GHG emissions and zero waste by 2030. As part of our zero GHG emissions goal, we made the commitment to set company-wide emission reductions as part of the SBTi, which helps businesses set targets that align with the latest climate science. We submitted our letter of commitment in 2022 and will be working to submit our targets in 2023, with the expectation that they will be confirmed by the SBTi in 2024.

In April 2022, we updated our [Environmental Stewardship Policy](#) to simplify and clarify our policy and expectations to our global associate community and other stakeholders. Our new policy was crafted to align our commitments to the United Nations (UN) Sustainable Development Goals and the UN Intergovernmental Panel on Climate Change, as well as with our core business principles within our [Code of Conduct](#), [Supplier Code of Conduct](#), [Corporate Vision](#), and [Tenets of Our Success](#). Specifically, we commit to:

- Complying with applicable laws and regulations in the countries in which we operate;

- Tracking our performance and regularly reporting on progress against measurable, context-based targets, by employing globally recognized standards and protocols;

- Minimizing our environmental impact directly where we have control and indirectly where we have influence;

- Engaging with our upstream and downstream supply chain partners to share our policy and expectations with regard to their environmental stewardship programs; and

- Communicating and engaging with our stakeholders on the material environmental stewardship issues associated with our operations and business.

Our policy applies to all lines of business and entities worldwide and signifies to our stakeholders that we take responsibility across all areas of our business to implement environmentally responsible practices.

One of the ways we operationalize our commitment to environmental stewardship is by pursuing and maintaining ISO 14001 certification to formalize and certify our environmental management systems. In 2022, we had three additional sites in Spain certified under this standard.



At Ingram Micro, we have spent many years supporting, promoting, and complying with sustainable practices, such as waste separation, LED lighting, changes in the fleet of company vehicles, collection of old equipment and delivery to approved recycling and treatment points, and reduction of emissions and waste in storage and logistics processes, among others. Now, the ISO 14001 seal endorses us as an environmentally responsible company. It is our responsibility and our commitment.

Jaime Seler, Vice President and Country Chief Executive of Ingram Micro for Spain and Portugal

Launch of IngramMicroPlanetary Program

We launched IngramMicroPlanetary, our dedicated sustainability program for environmental data collection, management, and goal setting, on Earth Day 2022. With this launch, we now have a coordinated company-wide approach to managing environmental sustainability issues and projects.

IngramMicroPlanetary is a catalyst and center of excellence to help the company achieve our zero GHG emissions and zero waste goals under our 10

to Zero initiative. IngramMicroPlanetary helps us more effectively embed impactful sustainability principles, strategies, and tactics across our operations by creating awareness and engagement within our associate community and our business partners.

Since the program's launch, our continued focus has been to grow our communications and engagement efforts with associates around the world, create and enhance environmental sustainability-related external communications, and encourage participation and recognition of global and local events, such as International E-Waste Day and California Clean Air Day.



Project Together

In February 2022, Ingram Micro Austria launched "Project Together" in collaboration with partners in the tech industry. For each purchase of eligible products, a tree is planted. Through "Project Together," we planted over 1,600 trees in Lower Austria's Waldviertel. The planting of the first 150 trees under the initiative was done as an effort to embed a culture of sustainability among our people during a teambuilding exercise for Ingram Micro.

Greenhouse Gas Emissions

As a foundational step towards meeting our goal to have zero GHG emissions in our operations by 2030, we are improving the quality of our data and pursuing strategic opportunities for decarbonization. We continue to calculate, and where necessary, estimate our emissions according to the GHG Protocol framework, including our Scope 1 and 2 emissions resulting from our operations, as well as Scope 3 value chain emissions from activities in relevant categories, such as emissions from purchased goods and services and use of sold products. In 2022, Ingram Micro's estimated total emissions across all scopes were 93.7 million MT CO₂e with over 99% of our total emissions coming from



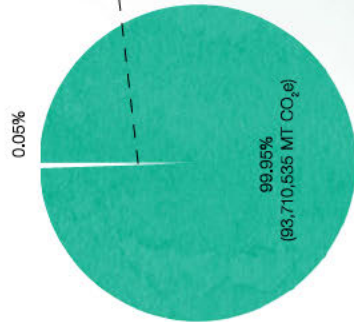
Being good environmental stewards is the right thing for companies to do, even beyond the efficiencies and good business practices these programs deliver.

John Marler, Director of Global ESG

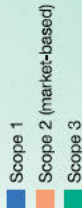
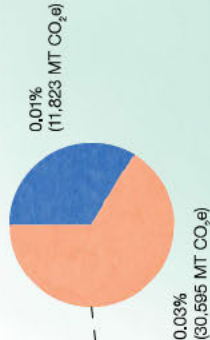
Scope 3 sources. This represents a decrease of 5.3% from 2021.

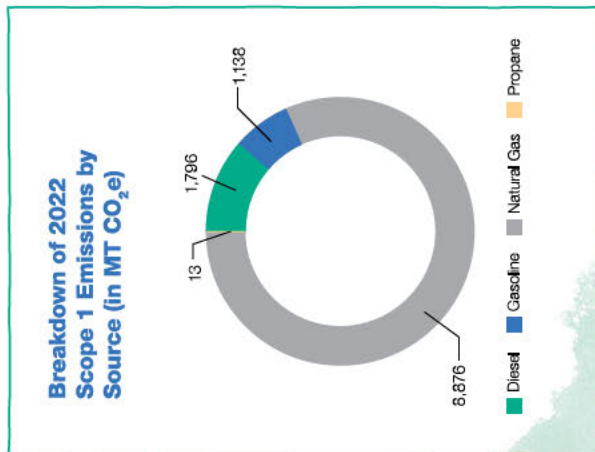
Ingram Micro has calculated intensity metrics— Scope 1 and Scope 2 GHG emissions and energy consumption against revenue—to show whether our business is becoming more energy- and carbon-efficient. In 2022, this figure is 0.83, compared to 1.17 in 2021 for CO₂e metric tons of per million dollars of revenue. One of the major contributions to this decline is the significant reduction in real estate portfolio, including the Commerce & Lifecycle Services (CLS) divestiture. Moving forward, we expect that our continuing efforts in the areas of energy efficiency and renewable energy will further reduce operational energy and emissions intensity. For more details on the emissions intensity, see the [Data Appendix](#) for Environmental.

Total GHG Emissions (%)



Total Scope 1 and 2 GHG Emissions (%)





GHG Scope Inventory Detail

Scope 1

Our Scope 1 emissions are primarily related to our use of natural gas for heating at our facilities. Other Scope 1 sources included fuels, such as diesel to power mechanical equipment and generators, diesel and gasoline to fuel company-owned and leased vehicles, and propane for generators. In 2022, our total global Scope 1 emissions were 11,823 MT CO₂e.

The very significant decline in global aggregate Scope 1 emissions (approximately 39%) can be attributed largely to the reduction in real estate footprint during the year. The reduction is an encouraging development but likely difficult to replicate on a go-forward basis.

In order to achieve our 10 to Zero goal, we must eliminate Scope 1 emissions. We plan to continue our efforts to use natural gas more efficiently in our buildings and to switch from fossil fuels to electric options where possible and feasible. Although fuel-related Scope 1 emissions are relatively small, vehicle electrification technology is advancing, and we expect this will help reduce our use of fossil fuels for vehicular



Moving the Industry

The Global Technology Distribution Council (GTDC) comprises the technology industry's top wholesale distributors who drive more than \$150 billion in annual worldwide sales and face similar challenges. In 2022, Ingram Micro joined a committee focused on environmental sustainability within the distribution channel and shared insights for GTDC's [Environmental Sustainability Report](#).

For example, in 2022, we ordered an electric yard truck for our largest warehouse in Mira Loma, California. As of the publication of this report that truck is now operational and has replaced its diesel-powered predecessor. Our service center in Fairfield, New Jersey, signed a lease for a new electric 26-foot box truck that will go into service in 2023.

Scope 2

Ingram Micro's Scope 2 emissions are almost exclusively the result of grid electricity consumption at our advanced logistics centers, service centers, and offices. In 2022, our Scope 2 market-based emissions were 30,594.74 MT CO₂e, a 31% decrease from our 2021 emissions of 44,129 MT CO₂e.

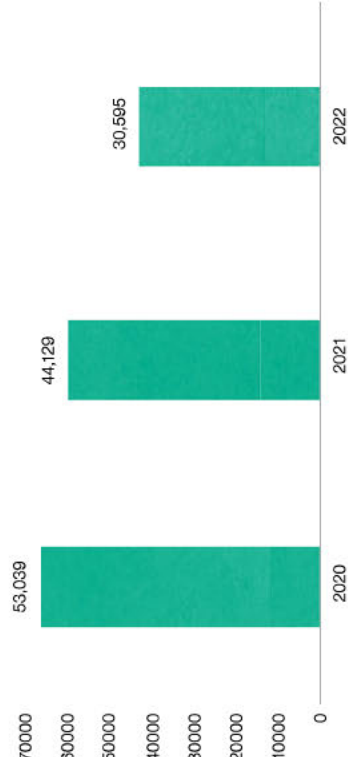
As with our Scope 1 emissions, this significant decline in Scope 2 emissions can be attributed largely to the reduction in our real estate footprint during the year. In 2022, we reduced our real estate footprint by more than 10 million square feet. Much of this was the result of the sale of a majority of our CLS business, but we have also

worked to examine the best use of space and needs across our network and the opportunities that hybrid work models create. We plan to continue to right-size our real estate space across our countries of operation.

Our key strategies to reduce our Scope 2 emissions include using energy more efficiently and increasing our procurement of renewable energy, either through supplier options or onsite energy generation. One example of our renewable energy developments was the installation of a rooftop solar array on our warehouse in Bhiwandi, India. For more information about our renewable energy strategies, see [Energy](#).



Year-Over-Year Scope 2 Market-based Emissions (MT CO₂e)



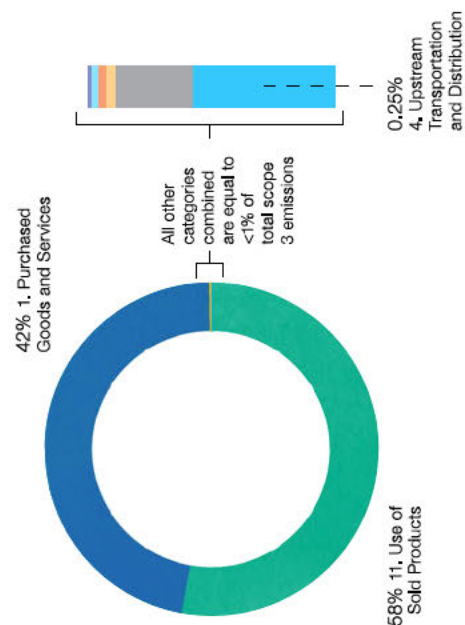
Scope 3

Ingram Micro calculated our Scope 3 emissions in 2022 to be 93.7 million MT CO₂e; 58% of which was from Category 11 (Use of Sold Products) and 42% of which was from Category 1 (Purchased Goods and Services). We are also working in conjunction with our partners to identify new opportunities within each category to reduce Scope 3 emissions.

Compared to our first Scope 3 inventory in 2021, we improved data collection methods to capture data across all our lines of business in 2022 under relevant Scope 3 categories, which has resulted in better data quality and comparability. In our original 2021 analysis of purchased goods and services, only 55% of our goods were tracked by item type so we reported emissions for those tracked categories only. In 2022, with improved data quality, 88% of items were categorized. To improve comparability, 2021 inventory has been recalculated, taking an average emissions approach from the known categories to cover all purchased goods and services for our merchandise sales. As such, our adjusted 2021 emissions increased substantially. To see our full inventory for both 2021 and 2022 see [Data Appendix](#) for Environmental.

Proportion of Scope 3 Emissions by Category

Scope 3 Category	2022 GHG Emissions (MT CO ₂ e)
1. Purchased Goods and Services	39,407,876
2. Capital Goods	18,432
3. Fuel- and Energy-related Activities	3,917
4. Upstream Transportation and Distribution	233,676
5. Waste Generated in Operations	4,170
6. Business Travel	5,998
7. Employee Commuting	17,476
8. Upstream Leased Assets	Included in scope 1 and 2
9. Downstream Transportation and Distribution	27,829
10. Processing of Sold Products	Not relevant - excluded
11. Use of Sold Products	53,892,360
12. End of Life Treatment of Sold Products	100,805
13. Downstream Leased Assets	Not relevant - excluded
14. Franchises	Not relevant - excluded
15. Investments	Not relevant - excluded
Total	93,710,535



Another example of better data quality is this year's expansion of the scope of evaluation to include our Lifecycle business and the equipment that we process for refurbishment, repair, and remarketing. We also have included analysis of our packaging usage.

These efforts are in line with our goal to improve the completeness and accuracy of our inventory over time in accordance with the GHG Protocol Corporate Value Chain Accounting and Reporting Standard on Scope 3 Emissions.

Our current strategy includes focusing on areas of the business where we have more direct influence, including reducing packaging and optimizing transportation in our upstream and downstream operations.

Employee Commuting

Employee commuting is a source of Scope 3 emissions where we have a greater degree of influence to drive toward lower emissions. We continue to utilize a hybrid working model for office-based associates across our U.S. offices and several of our international offices.

In the U.S., we expanded our commuter benefits package to allow associates to set aside pretax funds to pay for eligible transit and parking expenses. We have several office locations that have electric vehicles charging stations, and in 2022, we installed new EV charging stations at our facilities in Flensburg, Germany and Mississauga, Canada. Finally, as electric biking has

emerged as a growing method of transport, we rolled out an e-bike leasing program and e-bike charging at our Flensburg, Germany facility and interest-free loans for e-bikes for associates at our facility in Tilburg, Netherlands.

Value Chain Engagement

As we better understand emissions related to activities in our value chain, we also aim to find opportunities for collaboration with our internal stakeholders and supply chain partners to streamline data collection and inform decision-making to address Scope 3 emissions.

We believe that addressing Scope 3 emissions entails extensive engagement with all our stakeholders, from our suppliers to our customers. Given different measures of control, it carries with it unique challenges compared to managing our Scope 1 and 2 emissions. We may not yet have a clear path toward the decarbonization of our Scope 3 footprint; however, we are committed to continuous improvement in this area.

One example of this type of partnership comes from our work in the Spanish market with our customer Atos who shares our commitment to decarbonization. Ingram Micro was the recipient of the Most Innovative Initiative in 2022 in the Atos Trip2Zero Contest. Ingram Micro found that when using a certain class of

box, in 47% of the cases only 28% of its cubic capacity was being used (the rest was air). In addition, a high percentage of the shipments were destined for the same customer. A study was carried out on the type of product that was influencing this ratio, and another type of box with a smaller volume was proposed to reduce cardboard consumption and optimize the cubic capacity of the box. Additionally, this also resulted in a reduction of the cubic capacity of the trucks transporting them and consequently reduced the number of trucks needed for the same shipments, thus resulting in the overall reduction of carbon footprint.



E-bike charging station in Flensburg, Germany

Energy

Our ambition toward achieving more sustainable ways of business is closely tied to how we address our energy needs. We currently use energy to power our sites, where we consume electricity in our buildings for lighting, climate control, and equipment use. We use natural gas to heat many of our buildings and other fuels are used in company-owned or leased vehicles and generators. In 2022, we used 158,452 MWh of energy, 62% of which was purchased electricity and 31% was natural gas with the remaining from diesel, gasoline, and propane.

More than 95% of the square footage we occupy is leased, so we work closely with our landlords to explore the use of solar power, natural light, and upgrades for more efficient energy usage. These upgrades include converting lighting fixtures to light-emitting diodes (LED) and using motion sensors at our facilities to better control electricity consumption. We also continue to seek ways to optimize our operational systems to achieve more with less energy. These are all contributing factors to changes in our consumption of electricity.

Renewable Energy

Renewable energy continues to play an important role in our approach to decarbonization and a critical consideration when sourcing electricity. We are also starting to look beyond energy usage, to what the local energy grid looks like and where our emissions are concentrated. Our approach to this challenge is based on the results of a renewable energy roadmapping exercise we completed in 2021. As part of this exercise, each region was assessed for scalability, cost and complexity of renewable energy options, including on-site solar, green retail supply, virtual power purchase agreements, and energy attribute certificates. In line with our 10 to Zero goal to reach zero GHG emissions in our operations by 2030, we continue to look for ways where we can optimize electricity tariff and contract terms, identify and implement energy efficiency projects, and execute our network strategy and investments in automation.

Where the option is possible, we work to consider options for renewable energy through retail markets. In 2022, we procured 11.1 million kWh of electricity from renewable sources, which constitutes 11% of our total consumption of electricity, excluding



Photo of solar panels in Bhiwandi

renewable electricity already present in our consumption of grid electricity. Our reporting efforts were marked by a shift in working to verify renewable energy contracts and reassessing our options as our real estate portfolio decreased.



Improving Energy Efficiency, Embracing Renewable Energy: Highlights from Around the Globe

- Our largest warehouse in **Mira Loma, California** was upgraded with the installation of more than 1,200 new LED fixtures and a new heating, ventilation, and air conditioning system to improve environmental performance. Brighter, safer, and with Bluetooth controlled modules and drive aisle sensors, the LED project is projected to save more than 1,400 MWh of electricity annually
- Our site in **Bhiwandi, India** installed solar panels in April 2022. The site serves as a pilot facility to share best practices that may be applied to our other warehouses in the country. Additionally, our offices in India have enabled a “sleep mode” for all systems to reduce electricity consumption
- Our site in **Lomme, France** reduced electricity usage by 30% over the last three years and in 2022, this location entered into a renewable electricity contract
- Our operational team in **Crick, U.K.** installed LED lights and more energy-efficient conveyor systems. LED lights were also installed in our office in **Mexico**, and we have also collaborated with our landlord to install LED lights in our **Hungary** warehouse





Transportation

As a global distributor of technology equipment, we partner with third-party carriers around the world to deliver products safely and efficiently. We recognize the importance of reducing our transportation footprint and continually work with vendors and customers to identify opportunities for optimization, such as reducing the total number of trips needed to move products and improving shipment routes from our vendors to our global distribution centers and customers.

In 2022, we made significant investments in our network strategy to get closer to the customers, including building new warehouses in key markets. This strategy has been designed to take miles out of the transportation journey. For example, in the U.S., we expect to be able to make 95% of our carrier shipments within two days.

We also increased intermodal transportation in the U.S., which uses less fuel than trucking alone. By planning in advance, our team in India converted many air freight shipments to sea freight, reducing overall emissions associated with these shipments.

Consolidating shipments has proven to be an impactful strategy. For example, we worked with one of our largest national solution providers in the U.S. to reduce



EPA SmartWay Program

We entered our fourth year as a SmartWay Shipper Partner with the U.S. Environmental Protection Agency (EPA) SmartWay Program, which allows us to assess the environmental impact of our transportation, as well as measure our fuel efficiency and benchmark our performance in the U.S. Using SmartWay Carrier Partners allows us to track our performance and determine ways to better optimize our carbon footprint efficiency despite volume increases in the products we ship. Our submission in 2022 showed 98.8% of ton-miles were with SmartWay Carrier Partners and we reduced total miles by 37% in the 2021 reporting year.

the number of individual deliveries from our facilities to theirs by 60%. We also consolidated deliveries in our operations in Germany with two customers, which we estimate will avoid 50,000 kilometers of truck transportation in 2023. Another strategy used in Australia was to double the number of pallets that could fit on an outbound truck by using a double-deck truck,

Waste

In 2022, Ingram Micro established an ambitious goal to achieve zero waste in our operations by 2030 as part of our 10 to Zero initiative. To achieve this goal we are assessing the waste streams we generate and determining how we can reduce, reuse, or recycle materials and properly dispose of any hazardous materials in line with local regulations. We realize there are different challenges and opportunities in each of the markets we operate, and will be taking a systematic approach to identifying and sharing best practices across our locations and finding partners who can help us reduce waste and increase diversion. In 2022, we estimated that we generated 21,766 metric tons of non-hazardous waste and 324 metric tons of hazardous waste.

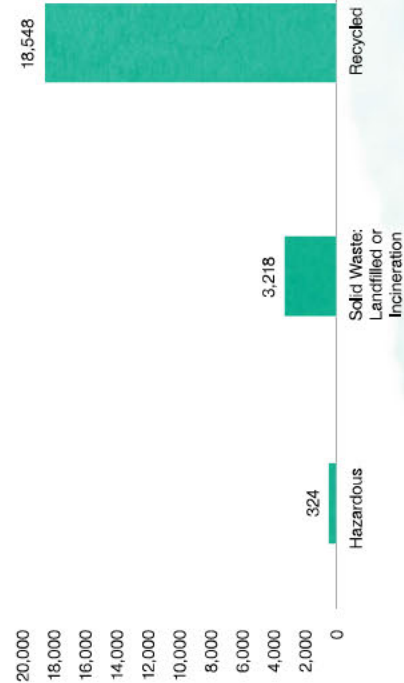
One example of our efforts to reduce waste includes switching to electronic records from paper records. Our Straubing, Germany location calculated that they were printing 1.9 million delivery notes for customers and started the process of working with customers to make the switch to digital. One of the first partners to agree to a digital solution helped save approximately 300,000 pieces of paper annually. In our distribution center in Constanti, Spain, we have likewise reduced paper use by forgoing packing slips in our orders

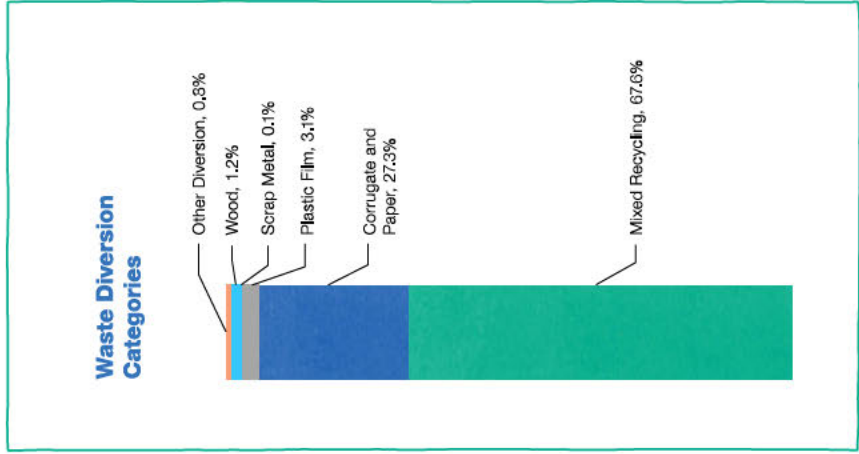
or reducing paper size. In India, we have initiated paperless clearance of import shipments with a digital tool developed in-house to submit documents, such as custom checklists, packing lists, and airway bills.

Our teams have also demonstrated commitment to waste reduction in unique circumstances. For example, in their move to a new office, our teams in Sweden worked to reuse existing furniture and supplemented this with the purchase of refurbished furniture. In our Budapest office, we donated our old furniture, thereby extending the usability of the furniture. Our team in Colombia also worked to reduce waste by finding new homes for our used furniture as part of our relocation process.

While the focus of our goal is on diversion of waste generated in our offices and warehouses, transitioning to a circular economy for information technology equipment and reducing e-waste is of critical importance. With our Ingram Micro Lifecycle business, we work to address the return, refurbishment, repair, and remarketing of technology products, all to help customers enable a circular economy. See [E-Waste and Circular Economy](#) for more details.

Operational Waste (MT)





Waste Diversion

As a global distributor, most of the waste we generate within our operations relates to shipping materials, including:

- Corrugated boxes
- Plastic film
- Paper
- Pallets
- Scrap metal

We also generate waste from offices, facility maintenance, and furniture/equipment disposal. As such, we primarily focus on reducing non-hazardous waste in our direct operations.

Some of the strategies we have implemented to minimize waste include right-sizing cartons, reusing supplies from incoming shipments, donating excess inventory, and diverting recyclable materials. Our warehouse in Straubing, Germany transitioned to reusable containers within Pan-European shipments, for example.

In 2022, we calculated that we diverted 85% of non-hazardous waste. As part of our efforts to improve data collection and accuracy, we are working to measure the specific recycling diversion streams and for the first time have reported tonnage of recycled corrugate and paper, plastic film, wood, and scrap metal. Over time, we expect the categorization to improve and mixed recycling to be a smaller category.

In general, hazardous waste generated in our operations and logistics centers is minimal. It includes materials, such as used oil, spent solvents, batteries, and residue in non-empty aerosol and paint cans.





Waste Compliance Program: U.S. Waste Stream Management

In 2022, we dedicated significant effort to better drive waste stream compliance in the U.S. and enhanced associate training and engagement with a campaign called “Know Where to Throw.” The Waste Compliance Program contains a detailed set of requirements for U.S. Ingram Micro facilities, including:

- Ingram Micro Waste Playbooks for Office and Warehouse Environments
- Waste Program Guidelines
- Facility Waste Compliance Control Plans
- Waste Bin and Signage Standardization
- Localized Waste Stream Training
- “Know Where to Throw” Marketing Campaign



In addition to training and signage that provided guidance on the types of materials to dispose of in each bin or receptacle, posters and other digital signage were used to draw awareness to the campaign and importance of knowing where to throw waste. More than 6,000 U.S.-based associates completed the 2022 online waste training. Likewise, each warehouse submitted logs of their training attendance.

In our warehouses and offices, we also outlined important standards in waste operations and hauler services in compliance with waste regulations, which includes information on the proper handling and storage of different kinds of waste.

To monitor the effectiveness of this training and ongoing compliance, an audit program was developed with protocols for weekly regularly scheduled audits at every U.S. site.



Bringing in marketing and design expertise to create our ‘Know Where to Throw’ Campaign helped pull together the messaging to make it memorable for associates. We wanted to show people the right way to dispose of their waste and make them think twice about which bin they chose. It has certainly been impactful and well-received.

Dean Edwards, Vice President, Global Strategic Sourcing

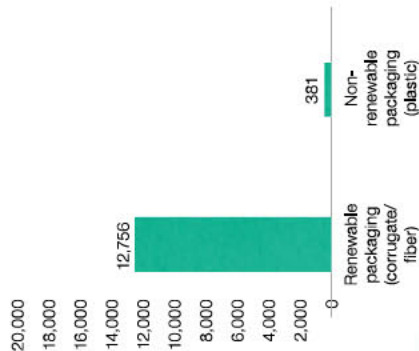
Packaging

Adequate packaging is an essential part of delivering products safely to our customers. In 2022, we estimated that we used 13,137 MT of packaging, 97% of which was from renewable materials. We estimated that 60% of our packaging material was from recycled content. We seek ways to reduce material use and waste in our supply chain alongside moving our products as efficiently as possible. This is in line with **our LEAN Program** for increasing operational efficiency and reducing waste.

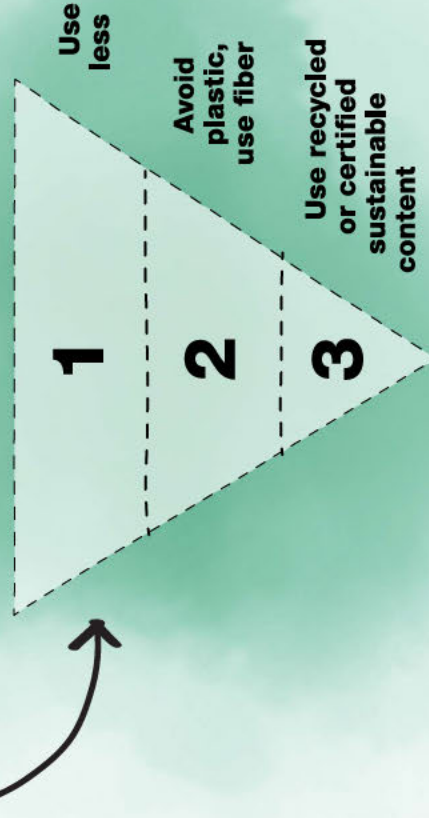
In 2022, we established a cross-functional Packaging Steering Committee to assess opportunities for packaging innovation across our global operations with leaders and project managers from Engineering, Procurement, Operational Excellence, and Environmental Sustainability. This project continues to be one of our major priorities in 2023 and our goal is to complete the conversion of all plastic mailers to fiber-based mailers by the end of the year.

The packaging we use includes corrugated cardboard, void fill, pallets, edge and corner protectors, mixed packaging media, film, and labels. While most of these supplies are sourced externally, we reuse some materials in operations, such as incoming cartons, pallets, or edge protectors applied to outgoing shipments.

Packaging Material Totals (MT)



Our Packaging Principles





In our operations in Crick, U.K., we expedited our pallet recovery program to prolong their usability by providing an in-place repair process. In India, we have also reduced our consumption of plastic by switching to wood pallets.

To reduce our material use, we have adopted right-sizing solutions in our facilities. Products that can be transported in the original vendor packaging are transported without additional secondary packaging. We also make use of a packaging algorithm that consolidates products within an order to the minimum amount of packaging required, which reduces the number of cartons required to fulfill an order. By reducing package dimensions, we are likewise able to utilize space on pallets and in freight vehicles more efficiently.

As part of our investments in right-sizing, we have deployed Packsize® technology, which provides cartons sized to fit specific products using the smallest dimensions possible without sacrificing integrity. This reduces the use of corrugate, void fill materials, and tape. With this solution, our Fort Worth, Texas facility now requires 50% less void fill. In 2022, we introduced the technology in our facilities in Mexico.

We are likewise working toward tracking the consumption of void fill and resin and polymer-based products used in the preparation of shipments. Where

possible, we avoid the use of plastic and prioritize renewable materials, such as fiber in our packaging. Our goal is to set meaningful targets related to other packaging materials used in our operations. We are fully committed to increasing the amount of packaging that comes from sustainable materials and working closely with our packaging vendors to identify and procure the solutions required to accelerate our progress.

When considering alternate packaging materials, we look at the sustainability impacts of the shipping materials (e.g., recycled content, recyclability, certified sustainable), as well as the ability of the materials to protect the product during transit. Extensive research and testing are completed at our warehouse facilities to ensure both quality and environmental responsibility standards are met.



Paper Mailer Rollout

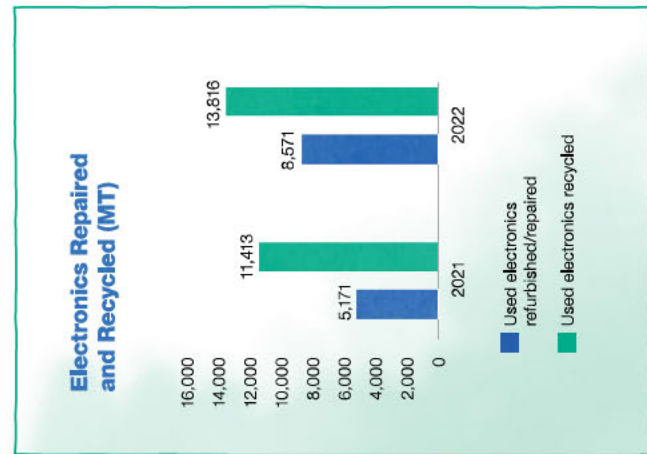
We are continuously exploring avenues to minimize environmental impacts by opting for more sustainable alternatives. In a step to reduce our plastic footprint, we tested the use of recyclable paper mailers and rolled this out to three of our U.S. warehouses in 2022. Since the conversion, we estimate that we avoided 63,800 pounds of plastic in 2022.

E-Waste and Circular Economy

As a technology distributor, we sell and distribute billions of electronic devices globally. According to the United Nations Environment Programme, e-waste is the largest growing waste stream in the world, with approximately 50 million tons generated each year. To better serve our communities and reduce environmental impacts, we recognize the importance of minimizing e-waste and following best practices for the proper disposal and recycling of obsolete devices.

Our goal is to be a leader in the transition to a circular economy in the information technology (IT) industry. We pursue this directly through our Ingram Micro Lifecycle business, which provides customers with IT Asset Disposition (ITAD) and Reverse Logistics services. In 2022, we operated **33 service centers, where we repaired or refurbished more than 9.9 million units**, including notebooks, monitors, mobile phones, and other assets.

Each device we receive is evaluated to determine its potential for reuse within the customer's organization or for the company to recover the residual value through resale on the secondary market. For example,



in partnership with O2 Recycle, we saved more than 250,000 devices from landfill in 2022, with more than 92% of the handsets refurbished and resold.

Devices that have reached end of life are responsibly recycled according to local, national, and international regulations surrounding e-waste handling. In 2022, we sent **approximately 13,800 metric tons of obsolete or inoperable devices** to our partners for responsible downstream recycling. We proudly maintain a wide range of industry-critical certifications and accreditations, including e-Stewards, R2, and ElektroG. These certifications are built upon high standards for responsible electronics recycling and reuse.

To further foster a collaborative industry, we are modernizing processes in the wholesale buying and selling of IT products on a global scale through our company Renugo. By providing a platform for buyers and sellers, coupled with software solutions, we are building a network to address market needs for used, refurbished, closeout, and obsolescent inventory.



We have also partnered with Inrego, which has more than 25 years of experience in IT product circularity and reducing resource utilization, to prolong the lifespan of IT products. Through our engagement, we can distribute refurbished items to customers in our Nordic Market.

International E-Waste Day

We actively engage our associates to participate in our waste reduction initiatives and, together, we celebrated International E-Waste Day on October 14, 2022, to raise awareness on the topic and collect e-waste across the organization for processing at our ITAD facilities. In total, 13 sites participated globally, and, in the U.S., we collected close to 8,000 pounds of e-waste.



Water

Ingram Micro uses water for domestic purposes in our offices and warehouses, so our overall water use is relatively low and strongly dependent on the number of associates working on-site at our facilities. Water is also used for cooling and humidity control, landscape irrigation, and maintenance activities, such as testing our fire protection systems.

In 2022, water withdrawals totaled approximately 181 megaliters of water from district or municipal water systems, the majority of which was returned to local wastewater systems for treatment. We estimate that about 10% of the water withdrawn is not discharged into the local sewage system and is most likely consumed through landscaping and employee consumption. Therefore, we estimate total 2022 water consumption to be 18.1 megaliters. The balance would equate to a total discharge of 162.9 megaliters.

While traditionally not identified as a material topic in our sector, we acknowledge the inherent value of water as a resource for survival. We understand that we have facilities that operate in water-stressed areas; therefore, we have associates who may be impacted by drought

or water quality issues. We also acknowledge that water is a vital resource in some industrial processes for our supply chain partners, and more directly, in certain technologies that rely on water for cooling solutions.

We have also begun to assess water risk across our sites using World Resources Institute (WRI) Aqueduct tools and the WWF Water Risk Filter 5.0. Using this methodology, we have assessed risks based on basin physical risk metrics, namely water scarcity, flooding, and water quality, which represent both natural and human-induced conditions of river basins.

As we look at countries and sites where water scarcity and security are salient issues, we intend to formulate plans that proactively contribute to ensuring access to usable water, especially for our associates around the world. The visual to the right shows a summary of our initial assessment using the WRI methodology.

We also recognize that fresh water supplies may be a potential significant long-term risk. At many of our sites most impacted by drought, our teams have worked with our landlords to consider water-saving strategies, including low-flow fixtures, drought-tolerant landscaping, and rainwater catchment tanks.

Preliminary Water Risk Assessment Findings



Approximately
14%

of our sites were identified as having "Extremely High" overall water risk



In business-as-usual conditions, around

60%

of Ingram Micro facilities are in areas projected to have an extremely high water stress risk in 2030 and 2040



Approximately
8%

of our sites were identified as having "Very High" risk on water scarcity



Approximately

45%

of our sites were identified as having "Very High" risk for water quality

Environmental

Greenhouse Gas Emissions			
Scope 1 & 2 (MT CO ₂ e)	2021		2022
Scope 1 emissions—unadjusted	19,507		11,823
Carbon Offsets	Not reported		857
Scope 2 emissions, market-based	44,129		30,595
Scope 2 emissions, location-based	Not reported		30,190
Scope 1 and 2 combined emissions	63,636		42,418
GHG emissions intensity for Scope 1 and Scope 2 (per million revenue USD)	1.17		0.83

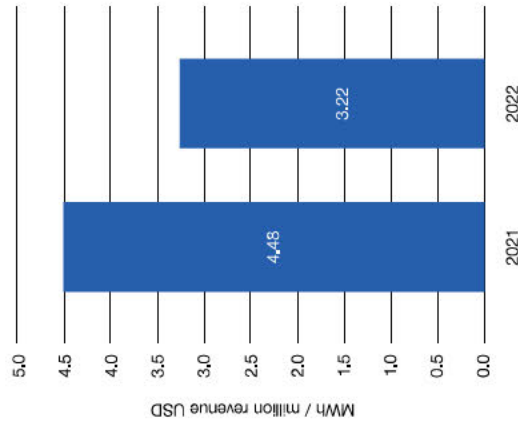
Greenhouse Gas Emissions			
Scope 3 Category (MT CO ₂ e)			
	2021	2022	
1. Purchased goods and services	50,249,203	39,407,875	
2. Capital goods	38,011	16,432	
3. Fuel- and energy-related activities	8,179	3,917	
4. Upstream transportation and distribution	445,874	233,676	
5. Waste generated in operations	13,165	4,170	
6. Business travel	1,631	5,996	
7. Employee commuting	17,640	17,476	
8. Upstream leased assets	Included in Scope 1 and 2	Included in Scope 1 and 2	
9. Downstream transportation and distribution	38,793	27,829	
10. Processing of sold products	Not relevant, excluded	Not relevant, excluded	
11. Use of sold products	45,310,185	53,892,360	
12. End of life treatment of sold products	72,040	100,805	
13. Downstream leased assets	Not relevant, excluded	Not relevant, excluded	
14. Franchises	Not relevant, excluded	Not relevant, excluded	
15. Investments	Not relevant, excluded	Not relevant, excluded	
Total	96,195,723	93,710,535	

A number of updates were made to the Scope 3 Greenhouse Gas (GHG) Emissions calculations in 2022 to reflect improved methodology, emissions coverage, and the divestiture of the Commerce & Lifecycle Services (CLS) business. These updates were applied to the 2021 Scope 3 inventory to offer a comparable baseline. Updates included:

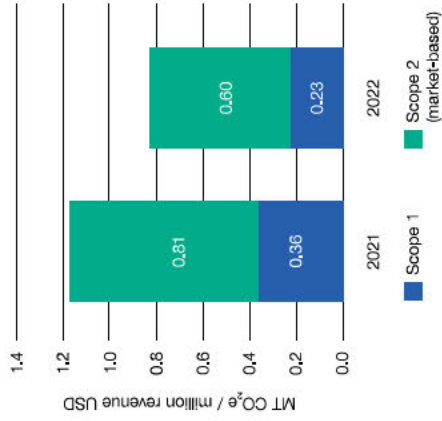
- Category 1: Purchased goods and services:
 - Widened the scope of products calculated. In 2021, a large portion (47%) of spend was not categorized and was excluded from calculations. Updated data increased the share of products categorized and assumptions were used to estimate the average emission intensity of uncategorized products.
 - Only emissions from the Technology Services (TS) business were included in 2021. Packaging emissions as well as products purchased by the IT Asset Disposition (ITAD) business were added for 2022.
- Category 7: Employee commuting
 - The average number of days spent in the workplace was reevaluated to better account for lockdown and new working conditions post-COVID-19.
- Category 8: Downstream transportation and distribution
 - Methods were corrected to only account for freight tracked by Ingram Micro and paid for by third-parties.

Greenhouse Gas Emissions Intensities by Source and Revenue

Energy Intensity per Revenue



GHG Emissions Intensity per Revenue



Energy		
Energy	2021	2022
Total energy use (MWh)	243,744	158,452
Diesel Fuel (MWh)	Not reported	6,822
Gasoline (MWh)	Not reported	4,241
Natural Gas (MWh)	Not reported	48,975
Propane (MWh)	Not reported	56
District Heating (MWh)	Not reported	913
Electricity (MWh)	Not reported	97,845
Percent of total energy that is purchased electricity (%)	48%	62%
Percent of total electricity directly procured from renewable sources	17.50%	11.34%
Energy intensity (MWh per million revenue USD)	4.48	3.12

*In 2022, the shift in percent of total electricity procured from renewable sources was due to the change in real estate portfolio, particularly our CUS divestiture, as well as an updated approach to verify energy contract terms.

Packaging		
	2021	2022
Packaging Materials Total* (MT)	37,043	13,137
Renewable packaging** (corrugate/fiber)	37,043	12,756
Non-renewable packaging*** (plastic)	Not tracked	381
% Renewable	Not tracked	97%
% Recycled Content****	Not tracked	60%

*The estimate for total packaging materials in 2022 includes usage of main shipping components of boxes and mailers but excludes other materials, such as void or tape.
 ** The estimate of renewable packaging (corrugate/fiber) in 2022 was from utilizing our Warehouse Management System data for shipment dimensions and estimating the weight per square inch. For some locations, sites provided weight for the materials they used. This is a change in methodology from the past, which was exclusively collected via site surveys.
 *** Non-renewable estimates in 2022 include plastics from mailers.
 **** Recycled content is defined as the total amount of recycled content across Ingram Micro packaging, including corrugate and plastic, where applicable. In the past, Ingram Micro tracked whether recycled content was present in its corrugate packaging and therefore the total tonnage of packaging that included some amount of recycled content. With the methodology change, the previous reported numbers for recycled content are not comparable.

Waste Generation		
Lifecycle Business	2021	2022
Used electronics refurbished/repaired (MT)	5,171	8,504
Used electronics recycled (MT)	11,413	13,816
Hazardous/Regulated Waste		
General operations (MT)	Not reported	324
Non-Hazardous Waste		
Solid Waste: Landfilled or Incineration (MT)	9,208	3,318
Recycled Total (MT)	43,693	18,548
Mixed Recycling	Not reported	12,538
Corrugate and Paper	Not reported	5,057
Plastic Film	Not reported	589
Scrap Metal	Not reported	24
Wood	Not reported	221
Other Diversion	Not reported	140
Total Non-Hazardous Waste (MT)	52,901	21,788
Diversion %	83%	85%

Water		
	2021 megaliters	2022 megaliters
Water Withdrawal*	312	181
Water Consumption**	31	18
Water Discharge***	281	163

* Total water withdrawal includes measured water withdrawal in which Ingram Micro is directly responsible for procuring water services. It also includes estimates where information could not be verified or other estimates self-reported from Ingram Micro sites.
 ** Ingram Micro estimates that 10% of the water withdrawn is consumed through irrigation or employee use, and not discharged back to the municipal wastewater system directly.
 *** We estimate that about 90% percent of the water withdrawn is discharged into the local sewage system for treatment. Ingram Micro does not treat wastewater directly.

Appendix 6– Promark/Ingram and Manufacturer Warranty and License Agreements

Warranty and License Agreements

Promark Technology/ Ingram Micro Warranty statement and/or License Agreement Policy for Direct Held Contracts are based on the rights offered by the specific manufacturer. Please find below the warranty and or license agreements for the vendors we have included in our proposal.

ARCTIC WOLF

Solutions Agreement

SOLUTIONS AGREEMENT (online)

This Solutions Agreement (the “**Agreement**”) is a legal agreement entered into by and between Arctic Wolf Networks, Inc. (“**Arctic Wolf**”) and the Customer identified on an order form (“**Customer**”) and governs any order forms, quotes, or other similarly intended ordering document (however named) executed or accepted by Customer (“**Order Form**”) that reference this Agreement or pertains to purchases of an Arctic Wolf subscription. The Order Form will be issued to Customer by Arctic Wolf or an authorized partner, as applicable (“**Authorized Partner**”). This Agreement is effective on the date Customer executes the Order Form, accepts the Order Form by submitting a matching purchase order to Arctic Wolf or the Authorized Partner, or otherwise accepts delivery or receives the benefit of the Solutions from Arctic Wolf (the “**Effective Date**”). This Agreement permits Customer to purchase subscriptions to the Solutions, as defined below, identified in the Order Form, and sets forth the terms and conditions under which those Solutions will be delivered. The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified herein and any Order Forms that reference this Agreement. If there is a conflict between the terms below, the Order Form, or the terms set forth in an URL referenced herein (such URL terms, the “**Terms**”), the documents will control in the following order: the Order Form, this Agreement, and the Terms.

BY EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, AN ORDER FORM, DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO ARCTIC WOLF OR THE AUTHORIZED PARTNER DOCUMENTING ACCEPTANCE OF AN ORDER FORM, OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE SOLUTIONS, OR CLICKING AN “I ACCEPT” OR “CONTINUE” BUTTON ASSOCIATED WITH THIS AGREEMENT, CUSTOMER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT AND ACCEPTS THE OFFER TO SUBSCRIBE TO THE SOLUTIONS PURSUANT TO THE TERMS HEREIN. IF YOU ARE AN EMPLOYEE OR OTHER REPRESENTATIVE ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER, YOU HEREBY REPRESENT AND WARRANT TO ARCTIC WOLF THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER; AND (B) YOU ARE OVER 18 YEARS OLD. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR IS NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT, DO NOT ACCEPT THE ORDER FORM, ISSUE A PURCHASE ORDER OR OTHER CONFIRMATION, OR OTHERWISE USE THE SOLUTIONS.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope.

1.1 Solutions. Customer will purchase and Arctic Wolf, together with its Affiliates, will provide the specific products and services (each a “**Solution**” or collectively, “**Solutions**”) as specified in the applicable Order Form. For purposes of this Agreement, “**Affiliate**” means any company or other entity, which directly or indirectly controls, is controlled by or is under joint control with a party.

A Solution will be comprised of the following components:

	Managed Detection & Response Solution	Managed Risk Solution	Managed Security Awareness / Managed Security Awareness+ Solution
Software	The object form of any software, including any operating system software included in the Equipment, and add-ons offering enhanced features and functionality made generally available to Arctic Wolf customers from time-to-time	The object form of any software, including any related to virtual Equipment, if applicable, any operating system software included in the Equipment, and add-ons offering enhanced features and functionality made generally available to Arctic Wolf customers from time-to-time	PhishTel Reporting Engine and Arctic Wolf Report Email Button, as set forth in the Solutions Terms
Equipment	Virtual appliances or physical sensors	Virtual appliances or physical scanners	N/A
Content	N/A	N/A	Online access and download rights, if licensed by Customer and as more fully described in the Solutions Terms, to Customer learning content and Content Compliance Pack within the Administrator Dashboard and/or Content Library
Content Management Hosting Environment	N/A	N/A	Access to and use of a cloud-based learning management tool (the “Administrator Dashboard”) and metrics related to the use of the Content by Customer’s users
Services	Support, onboarding services, and services provided by Security	Support, onboarding services, and services provided by Security	Support, onboarding services, and Content modification

	Services, all as described in the Solutions Terms (defined below)	Services, all as described in the Solutions Terms (defined below)	services, all as described in the Solutions Terms (defined below)
Professional Services	As agreed by the parties in accordance with Section 3	As agreed by the parties in accordance with Section 3	As agreed by the parties in accordance with Section 3
Platform	One (1) vSensor 100 series Unlimited data ingestion Access to the Customer Portal Use of the Arctic Wolf Agent ITSM Ticketing Integrations (if elected by Customer) 90-day Log Retention (unless another retention period is purchased by Customer and set forth on an Order Form)	Unlimited data ingestion Access to the Customer Portal Use of the Arctic Wolf Agent ITSM Ticketing Integrations (if elected by Customer)	N/A

1.2 License Grant. The Solutions are provided on a subscription basis for a set term designated on the Order Form (each, a “**Subscription Term**”) for the one-time costs and subscription fees set forth therein (the “**Fees**”). Provided Customer is compliant with the terms of this Agreement, including payment of Fees, Arctic Wolf grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive right and/or license during the Subscription Term, to the extent a component of the Solutions being licensed by Customer as set forth in Section 1.1 above, to:

- (i) Install, use, and access the Software,
- (ii) Use the Equipment for purposes of the use of the Solutions,
- (iii) Obtain and use the Services in conjunction with Customer’s use of the Solutions,
- (iv) Load Customer’s users and associated information for delivery of Content and use of the Administrator Dashboard,
- (v) Access the Customer Portal and/or Administrator Dashboard, as applicable, subject to the Privacy Notice located at <https://arcticwolf.com/privacy-policy-for-customer-portal-users/>, as may be updated from time-to-time in accordance with Section 13 below (the “**Privacy Notice**”),
- (vi) Access and use the Platform features and functionality,
- (vii) Use Arctic Wolf Trademarks included in the Content in accordance with the Solutions Terms, and
- (viii) Distribute, display, transmit, and, if licensed by Customer, download certain Content in electronic format.

Customer may access and use the Solutions, and any Documentation associated therewith, solely for its own and its Affiliates’ internal business purposes and in accordance with the terms and conditions of this Agreement, such associated Documentation, any scope of use restrictions and license counts, including by server, user, or such other licensing metric designated in the applicable Order Form, and the Solutions Terms found at <https://arcticwolf.com/terms/solutionsterms/>, as may be updated from time to time by Arctic Wolf in accordance with Section 13 herein (the “**Solutions Terms**”). “**Documentation**” means user manuals, training materials, product descriptions and specifications, and other printed information relating to the Solution, as in effect and generally available from Arctic Wolf, but expressly excluding marketing and sales collateral and materials.

1.3 Future Functionality. Subject to the warranties set forth in Section 10, Customer agrees that it has not relied on the promise of availability of any future functionality of the Solutions or any other future product or service in executing this Agreement or any Order Form. Customer acknowledges that information provided by Arctic Wolf regarding future functionality should not be relied upon to make a purchase decision. Should Arctic Wolf offer additional optional functionality in the future that complement the Solutions, Customer may elect to subscribe to and obtain a license to the optional functionality for an additional fee.

1.4 Except as otherwise provided herein, Customer understands and agrees that the Authorized Partner may not modify this Agreement or make any commitments related to the delivery or performance of the Solutions on Arctic Wolf’s behalf.

1.5 Beta Solutions.

1.5.1 From time-to-time Arctic Wolf may invite Customer to try, at no charge, Arctic Wolf products, features, or functionality that are not generally available to Arctic Wolf’s customers (“Beta Solutions”). Customer may accept or decline any such trial in its sole discretion. Any Beta Solutions will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import.

1.5.2 Restrictions and Disclaimers. Beta Solutions are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. To the full extent permitted by applicable U.S. and foreign consumer protection laws, Beta Solutions are not considered Solutions hereunder and are provided solely and exclusively “AS IS” with no express or implied warranty of any kind. TO THE FULL EXTENT PERMITTED BY APPLICABLE U.S. AND FOREIGN CONSUMER PROTECTION LAWS, (THE “CONSUMER PROTECTION LAWS”), CUSTOMER ASSUMES AND UNCONDITIONALLY RELEASES ARCTIC WOLF FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY BETA SOLUTIONS. Arctic Wolf may discontinue the Beta Solutions at any time in its sole discretion and Arctic Wolf will make reasonable efforts to provide Customer with advanced notice of any such discontinuance. Arctic Wolf does not promise or represent that Beta Solutions will be made generally available.

1.5.3 NO DATA RETENTION. ANY DATA ENTERED INTO THE BETA SOLUTIONS MAY BE PERMANENTLY LOST UNLESS CUSTOMER: (i) PURCHASES A SUBSCRIPTION TO THE COMMERCIALY AVAILABLE VERSION OF THE BETA SOLUTIONS AS MAY BE MADE AVAILABLE BY ARCTIC WOLF; OR (ii) TO THE EXTENT POSSIBLE, EXPORTS SUCH DATA PRIOR TO TERMINATION OF THE BETA SOLUTIONS.

1.5.4 **LIMITED LIABILITY.** TO THE FULL EXTENT PERMITTED BY LAW, INCLUDING THE CONSUMER PROTECTION LAWS, ARCTIC WOLF'S ENTIRE LIABILITY IN CONNECTION WITH ANY USE OF THE BETA SOLUTIONS WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT, AS TO ANY INDIVIDUAL CLAIM OR IN THE AGGREGATE, EXCEED \$50. IF CUSTOMER DOES NOT AGREE TO THE ALLOCATION OF RISK IN THIS SECTION, ITS SOLE RECOURSE IS TO IMMEDIATELY DISCONTINUE THE USE OF THE BETA SOLUTIONS.

1.5.5. Despite anything to the contrary in this Agreement, Customer acknowledges that (a) Beta Solutions may not be supported and may be changed at any time, including in a manner that reduces functionality, (b) Beta Solutions may not be available or reliable, and (c) Beta Solutions may not be subject to the same security or audits as the Solutions.

1.6 **IR JumpStart Retainer.** In the event Customer's Order Form includes the license of IR JumpStart Retainer, Customer agrees that the IR JumpStart Retainer Agreement located at <https://arcticwolf.com/terms/> shall apply. If Customer is a managed service provider plus Authorized Partner ("MSPP"), MSPP, as Customer, understands that the IR JumpStart Retainer Agreement is an agreement between Arctic Wolf and MSPP's end user and MSPP is reselling IR JumpStart Retainer to its end user. If Customer is a managed service provider ("MSP") Authorized Partner and has licensed IR Jumpstart Retainer for use with an end user, MSP is Arctic Wolf's Customer in accordance with the terms of the IR JumpStart Retainer Agreement for Managed Service Providers located at <https://arcticwolf.com/terms/>.

2. **Equipment.** If the Order Form specifies that Customer will receive Equipment, then Customer is responsible for installing the Equipment at the location(s) specified by Arctic Wolf and for the implementation of appropriate data protection practices related to the protection of any information included on such Equipment while the Equipment is located within Customer's environment. The Equipment is a part of the Solutions and included with the subscription to the Solutions for use by Customer during the Subscription Term. If Customer attempts to install or use the Equipment at a location other than the location determined by Customer and communicated to Arctic Wolf during onboarding or at any time thereafter, the Solutions may fail to function or may function improperly. In the event Customer installs, uses, or relocates the Equipment, Customer will promptly notify Arctic Wolf so that Equipment deployment information can be updated within Customer's account. Other than normal wear and tear, Customer is directly responsible for the replacement cost of the Equipment associated with any loss, repair, or replacement, including any other costs, damages, fees, and charges to repair the Equipment. If applicable, Arctic Wolf will ship Equipment to Customer and will pay the freight costs associated with shipping the Equipment to Customer's designated locations. Customer is responsible for all additional costs and expenses associated with shipping the Equipment to its designated locations and for the return of the Equipment to Arctic Wolf. Such additional costs and expenses may be reflected on an Order Form, from time-to-time following shipment of the Equipment and will be invoiced by Arctic Wolf or the Authorized Partner. Customer understands and agrees if the Equipment is shipped outside of the United States or Canada (or such other locations identified by Arctic Wolf), Customer is responsible for acting as the importer of record.

3. **Professional Services.** In the event Arctic Wolf and Customer agree on the delivery of Professional Services, any such Professional Services shall be specified on an Order Form and described in a statement of work which shall reference this Agreement.

4. **Reservation of Rights and Ownership.** Arctic Wolf owns or has the right to license the Solutions and any associated Documentation ("**Arctic Wolf Technology**"). Customer acknowledges and agrees that: (a) the Arctic Wolf Technology is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws; (b) Arctic Wolf retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Arctic Wolf Technology, excluding any rights, title, and interest in any Third Party Products (as defined in Section 10.3 below) which shall be retained by its third party licensor(s), Threat Intelligence Data (as defined in Section 7.3), and any other deliverables, know-how, databases, developed programs, and registered or unregistered intangible property rights related to the foregoing; (c) there are no implied licenses and any rights not expressly granted to Customer hereunder are reserved by Arctic Wolf; (d) the Solutions, excluding Professional Services, is licensed on a subscription basis, not sold, and Customer acquires no ownership or other interest (other than the license rights expressly stated herein); and (e) the Solution is offered as an on-line, hosted solution, and Customer has no right to obtain a copy of the Software.

5. Restrictions, Responsibilities, and Prohibited Use.

5.1 **Restrictions.** Customer agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works of the Arctic Wolf Technology except as otherwise expressly permitted under applicable U.S. and foreign copyright laws ("Copyright Laws") which may not be excluded by agreement between the parties; (ii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the intellectual property contained within Solutions, except as otherwise expressly permitted under the Copyright Laws which may not be excluded by agreement between the parties; (iii) interfere with or disrupt the integrity or performance of the Solutions or the data and information contained therein or block or disrupt any use or enjoyment of the Solutions by any third party; (iv) attempt to gain unauthorized access to the Arctic Wolf Technology or related systems or networks; (v) remove or obscure any proprietary or other notice contained in the Arctic Wolf Technology, including on any reports or data printed from the Arctic Wolf Technology; (vi) unless Customer is an Authorized MSP Partner of Arctic Wolf, use the Solutions in connection with a service bureau, service provider or like activity whereby Customer operates or uses the Solutions for the benefit of a third party (excluding use with Customer's Affiliates); (vii) use the Solutions to monitor or scan any environments for which Customer has not received consent; or (viii) with respect to Customer's subscription to the Managed Security Awareness Solution, include material or information that is obscene, defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or otherwise results in any tort, injury, damage or harm to any person. Customer agrees to abide by the terms of the Acceptable Use Policy at <https://arcticwolf.com/terms/acceptable-user-policy/>, as may be updated from time-to-time in accordance with Section 13 below. If Arctic Wolf, in its reasonable discretion, determines that Customer's use of or access to the Solutions imposes an actual or imminent threat to the security or stability of Arctic Wolf's infrastructure or that Customer is abusing its use of the Solutions in contravention with the terms of this Agreement, Arctic Wolf may, in addition to any other right herein, temporarily suspend Customer's access to the Solutions, without liability except as otherwise provided by Consumer Protection Laws, until such activity is rectified. If commercially practicable, Arctic Wolf shall provide Customer with notice prior to any such suspension and shall work with Customer in good faith to reinstate the Solutions promptly.

5.2 **Arctic Wolf Responsibilities.** Arctic Wolf shall provide the Solutions Customer subscribes to as set forth on an Order Form in accordance with the terms of this Agreement, as further described in the Solutions Terms. The Solutions provided under this Agreement shall include any updates, upgrades, bug fixes, version upgrades or any similar changes that are made generally available to Arctic Wolf's customers free of charge from time to time during the Subscription Term.

5.3. Customer Responsibilities. Customer must identify the administrative users for its account which may include Customer's and its Affiliates' authorized (email authorization sufficient) third party service providers and agents ("**Administrators**"). Each Administrator will receive an administrator ID and password and will need to register with Arctic Wolf. Customer is responsible for registering and updating its Administrators, or notifying Arctic Wolf, as applicable, about changes to Administrators, including but not limited to termination, change of authority, and the addition of Administrators. Customer acknowledges and agrees that (i) Administrators will be able to view all Solutions Data and other traffic and activities that occur on Customer's network and that Customer is responsible for all activities that occur under Administrator accounts, and (ii) Administrators may communicate with Arctic Wolf using chat features within the Solution dashboards and such communications may be monitored and recorded by Arctic Wolf and the third party tool provider for purposes of customer service, quality assurance, and other business purposes set forth in the Privacy Notice and Customer consents to such activity. Administrator IDs are granted to individual, named persons and cannot be shared or used by more than one Administrator but may be reassigned from time-to-time to new Administrators. Notwithstanding anything contrary herein, Customer understands and agrees that transmission of Solutions Data to Arctic Wolf may be impacted by in-country technical issues and requirements. Arctic Wolf will provide reasonable assistance to Customer in such instances but is not liable if the Solutions Data cannot be transmitted outside of such country. Customer is responsible for implementing appropriate internal procedures and oversight to the extent it utilizes the configuration of workflows and processes, including but not limited to containment actions, and similar functionalities in conjunction with the Services. Arctic Wolf may recommend Customer, depending on the scope of the deployment, implement software and services to enable features of the Solutions or to permit increased visibility into Customer's environment. Customer is responsible for making such determinations in its discretion and Arctic Wolf has no liability for Customer's decisions related thereto. Customer acknowledges that any changes Customer makes to its code, infrastructure, or configuration of the Solutions after initial deployment may cause the Solutions to cease working or function improperly or could prevent Arctic Wolf from delivering the Solutions and Arctic Wolf will have no responsibility for the impact of any such Customer changes. Customer understands that depending on the Solution deployed, a Solution may consume additional CPU and memory in Customer's environment while running in production.

5.4 Anti-corruption. In no event shall Arctic Wolf be obligated to take any action (including the shipping of any product or the provision of any service) or omit to take any action that Arctic Wolf believes in good faith would cause it to be in violation of any U.S. or foreign laws or regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act (the "**FCPA**"). Neither party will (i) attempt to, directly or indirectly, improperly influence the sale or purchase of products by payments or other actions contrary to law or regulation, or (ii) take any action or permit or authorize any action that would violate or cause a party to violate the FCPA, the UK Bribery Act, or other applicable anti-corruption laws or regulations. Neither party will, for the purpose of influencing any act or decision to obtain or retain business or direct business to any person, pay, offer or promise to pay, or authorize the payment of, directly or indirectly, any money or anything of value to or for the use or benefit of any of the following: (a) any government official (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or any representative of any public international organization, or any person acting in any official capacity for or on behalf of any government, state-owned business or public organization); (b) any political party, official thereof, or candidate for political office; or (c) any other person if a party or any respective partner, officer, director, employee, agent, representative or shareholder of such party knows or has reason to suspect or know that any part of such money or thing of value will be offered, given, or promised, directly or indirectly, to any of the above-identified persons or organizations. Each party acknowledges and agrees that none of its officers, directors, employees, agents or representatives is a government official or employee or an official or employee of any department or instrumentality of any government, nor is any of them an officer of a political party or candidate for political office, who will share directly or indirectly any part of the sums that may be paid pursuant to performance of this Agreement; and each party agrees to immediately notify the other party should the foregoing change during the term of this Agreement. Each party represents and warrants that neither this Agreement nor the performance of or exercise of rights under this Agreement is restricted by, in conflict with, requires registration or approval or tax withholding under, or will require any termination or expiration, compensation, or any compulsory licensing under, any applicable law or regulation of any country or other governmental entity, and each party will not make any claim to the contrary (each party is relying on this representation and warranty, among other provisions of this Agreement, in entering this Agreement and would not enter this Agreement in its absence).

5.5 Trade Controls. Customer understands that the Solutions may be subject to the export control, economic sanctions, customs, import, and anti-boycott laws, regulations, and orders promulgated or enforced by Canada, the United States, Customer's jurisdictions of incorporation and operations, and any other country or governmental body having jurisdiction over the parties to this Agreement ("**Trade Controls**"). Customer shall ensure that the Solutions are not re-exported, provided or transferred to any person or entity listed on any restricted or prohibited persons list issued by Canada, the United States, Germany, or any governmental authority of any applicable jurisdiction, including but not limited to the Bureau of Industry and Security's Denied Persons, Entity, or Unverified List or the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, or Sectoral Sanctions Identifications List (collectively, the "**Restricted Persons Lists**"). Customer represents and warrants that it and its shareholders, members, partners, or other owners are not listed on, or owned 50% or more, collectively or individually, by anyone on a Restricted Persons List. Customer shall not use the Solutions (a) for a military application, wherever located; or (b) with knowledge or reason to know that the Solutions will be used for nuclear, chemical, or biological weapons proliferation or (c) for any other end use or by any end user otherwise prohibited by applicable Trade Controls. Upon request by Arctic Wolf, Customer will complete and provide an end use certificate in the form requested by Arctic Wolf. Arctic Wolf may suspend and/or cancel the export, delivery, and/or servicing of the Solutions, if: (i) Arctic Wolf has not received requested end-user certifications; (ii) Arctic Wolf has not received any government approvals required to comply with Trade Controls, or (iii) Arctic Wolf believes that such activity may violate any Trade Controls. If the Solutions are resold or transferred in violation of any Trade Controls or the provision of this Agreement, Arctic Wolf shall not be obligated to provide any warranty service or technical support for such Items.

5.6 Public Entity Customers. If Customer is a public entity, Customer acknowledges and agrees this Agreement is the sole set of terms governing the delivery of the Solutions to Customer and for the avoidance of doubt, terms related to acceptance related to any services or work product shall not apply. The terms of any request for proposal(s), request for information, invitation to qualify, purchasing agreement or cooperative contract, or similar agreement Customer is using to purchase the Solutions (as defined below) from an Authorized Partner do not apply to Arctic Wolf. Further, Customer understands, and hereby consents, that Solutions Data may be accessed and processed by Arctic Wolf and its non-US Affiliates and their non-US citizen employees and Arctic Wolf's authorized third-party service providers in the United States, Europe, or other locations around the world. Notwithstanding anything contrary in any other agreement or purchasing contract, Customer understands and agrees

that during the Subscription Term, Arctic Wolf will maintain security controls and processes no less restrictive than those set forth in its SOC 2 Type II report and ISO 27001 certification. Customer is responsible for determining if Arctic Wolf's controls and processes comply with Customer's data handling and security policies.

Customer represents that in purchasing the Solutions, (i) Customer is not relying on Arctic Wolf for performance of a federal prime contract or subcontract and (ii) Customer is not receiving federal funds to purchase the Solutions. If Customer does intend to rely on Arctic Wolf Solutions to fulfill its obligations under a federal prime contract or subcontract or utilize federal funds to purchase the Solutions, Customer agrees to provide Arctic Wolf advance written notice of that intention, and Arctic Wolf shall have the option to terminate this Agreement.

Arctic Wolf Technology is a "commercial item", "commercial computer software" and "commercial computer software documentation," pursuant to DFARS Section 227.7202 and FAR Sections 12.211-12.212, as applicable. All Arctic Wolf Technology is and was developed solely at private expense and the use of Arctic Wolf Technology by the United States Government are governed solely by this Agreement and are prohibited except to the extent expressly permitted by this Agreement.

Customer represents it has the requisite authority to enter into and perform under this Agreement.

6. Fees, Payment, Taxes, and Audit. Pricing for the Solutions will be specified on an Order Form.

6.1 Order Forms and Invoices Issued by Arctic Wolf. If an Order Form is issued to Customer by Arctic Wolf, or in limited circumstances, Arctic Wolf invoices Customer directly for any fees, including but not limited to renewal subscription fees, incidental charges, such as international shipping costs Section 6.2 does not apply and the following terms apply:

All fees are payable in the currency set forth in the Order Form (or applicable invoice) and are non-cancelable and non-refundable EXCEPT AS REQUIRED BY CONSUMER PROTECTION LAWS, ARCTIC WOLF IS NOT OBLIGATED TO REFUND ANY FEES OR OTHER PAYMENTS ALREADY PAID, AND ANY CANCELLATION BY CUSTOMER WILL TAKE PLACE AT THE END OF THE APPLICABLE SUBSCRIPTION TERM, UNLESS ARCTIC WOLF OTHERWISE AGREES IN WRITING. Delinquent amounts shall bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or the maximum rate permitted by law, whichever is less. If Customer fails to make any payments due under this Agreement or an applicable Order Form, Arctic Wolf shall notify Customer of such nonpayment. If a payment that is due remains unpaid for ten (10) days after Arctic Wolf provides Customer with notice of such nonpayment, Arctic Wolf may cease providing the Solutions without any liability to Arctic Wolf. The amounts payable to Arctic Wolf are exclusive of any sales tax, use tax, excise tax, VAT, GST, HST, or similar taxes ("**Indirect Taxes**"). Customer is solely responsible for payment of all Indirect Taxes. If Customer is required to pay any Indirect Taxes, Customer shall pay such Indirect Taxes with no reduction or offset in the amounts payable to Arctic Wolf hereunder and Customer will pay and bear such additional amount as shall be necessary such that Arctic Wolf receives the full amount of the payment required as if no such reduction or offset were required. If Arctic Wolf has the legal obligation to pay or collect Indirect Taxes for which Customer is responsible, Customer authorizes Arctic Wolf to charge Customer for such amount. If Customer believes that Arctic Wolf has billed Customer incorrectly, Customer must contact Arctic Wolf no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit. Inquiries should be directed to Arctic Wolf's customer support department.

6.2 Order Forms Issued by Authorized Partner. If an Order Form and/or invoice is issued to Customer by an Authorized Partner, Section 6.1 does not apply, and the following terms apply: Customer is purchasing the Solutions through the Authorized Partner. The Order Form containing terms related to fees, payment, taxes, audit, and any other related terms shall be between Customer and the Authorized Partner. Customer will pay any owed amounts to the Authorized Partner, as agreed between Customer and Authorized Partner. Customer agrees that Arctic Wolf may suspend or terminate Customer's use of the Solutions upon ten (10) days' written notice to Customer if Arctic Wolf does not receive payment of Fees from the Authorized Partner. The amounts paid by Authorized Partner to Arctic Wolf for Customer's use of the Solutions under this Agreement will be deemed the amount actually paid or payable under this Agreement for purposes of calculating Arctic Wolf's liability under Section 11. Customer's renewal pricing will be communicated to Customer by the Authorized Partner in accordance with the terms Customer has with the Authorized Partner or by Arctic Wolf prior to the renewal Subscription Term.

6.3 Audit. During the term of this Agreement and for one year thereafter, Customer shall provide Arctic Wolf, or its designated representative, promptly upon request with appropriate records requested by Arctic Wolf to verify Customer's compliance with the Agreement, including specifically its license counts as set forth on an Order Form. Arctic Wolf, at its option, may require that an executive officer of Customer certify in writing to Customer's compliance with this Agreement and disclose the scope of use of the Solutions by Customer. If, because of such audit, Arctic Wolf determines that Customer has exceeded the number of licenses subscribed to by Customer on an Order Form, Arctic Wolf will notify Customer of the number of additional licenses, along with the associated Subscription Fees prorated through the end of the then-current Subscription Term, and Customer will remit payment for such Subscription Fees in accordance with this Section 6.

7. Confidentiality; Data.

7.1 Confidentiality. Either party (as a "**Discloser**") may disclose confidential and proprietary information, orally or in writing ("**Confidential Information**") to the other party (as a "**Recipient**"). Confidential Information (a) shall be marked with a restrictive legend of the Discloser or, (b) if orally or visually disclosed to Recipient by Discloser, or disclosed in writing without an appropriate letter, proprietary stamp, or legend, shall be confidential if it would be apparent to a reasonable person that such information is confidential or proprietary. Confidential Information of Arctic Wolf includes the following: any pricing, trade secrets, know-how, inventions (whether or not patentable), techniques, ideas, or processes related to the Arctic Wolf Technology; the design and architecture of the Arctic Wolf Technology; the computer code, internal documentation, and design and functional specifications of the Arctic Wolf Technology; Arctic Wolf's security and privacy due diligence material such as SOC2 reports, security and privacy questionnaire responses & memos; and any intellectual property and know-how included in the problem reports, analysis, and performance information related to the Arctic Wolf Technology, and Threat Intelligence Data. Confidential Information of Customer may include the following:

(i) If the MA or MA+ Solution is deployed: First name, last name, corporate email address, phone number, job title, address, and organization hierarchy (collectively, "**Point of Contact information**"); User setup details (User email, work title, and name), Solution metrics

related to such Users, including your Users' learning status, training scores, and Phishing results associated with such Users' use of the Solution (collectively "**Learner Data**"); if the Arctic Wolf Email Report Button is deployed by Customer, information pertaining to phishing email(s) self-reported by a User and includes or may include name of User, email address of User, json web token, full content of email, and version data (collectively, "**Phishtel Data**"); and Customer created and owned content, if any; and

(ii) If MDR and/or MR Solutions are deployed: Points of Contact Information and Solutions Data (as defined in Section 7.2 below).

Each party agrees to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the Discloser to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder and as described in the Privacy Notice. Each party agrees to take commercially reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of this Agreement. The Recipient may disclose Confidential Information only: (a) with the Discloser's prior written consent; or (b) to those employees, officers, directors, agents, consultants, third party service providers, and advisors with a clear and well-defined "need to know" purpose who are informed of and bound by confidentiality obligations no less restrictive than those set forth in this Section 7. Notwithstanding the foregoing, the Recipient may disclose Confidential Information to the extent required by law; however, the Recipient will give, to the extent legally permissible and reasonably practical, the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order and such Confidential Information disclosed to the extent required by law shall otherwise remain confidential and subject to the protections and obligations of this Agreement. For the avoidance of doubt, Arctic Wolf may share Customer's name with Customer's services providers to assist Customer in the resolution of technical issues pertaining to the Solutions. To the extent legally required, Arctic Wolf may report any violations of law pertaining to Customer's use of the Solutions. The Discloser agrees that the foregoing confidentiality obligations shall not apply with respect to any information that the Recipient can document is: (i) rightfully in its possession or known to it prior to receipt from the Discloser without an obligation of confidentiality; (ii) or has become public knowledge through no fault of the Recipient; (iii) rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; or (iv) independently developed by employees of the Recipient who had no access to Discloser's Confidential Information. Upon expiration or termination of this Agreement for any reason, and except as otherwise provided in Section 14 below, each party shall promptly destroy all copies of the other party's Confidential Information and copies, notes or other derivative material relating to the Confidential Information. Notwithstanding the foregoing, and subject to the Privacy Notice, Arctic Wolf may retain Contract Account Information which may include Customer name, contact first name and last name, corporate email address, phone number, job title, address, and organization hierarchy following termination of this Agreement for its internal business purposes.

7.2 Solutions Data. "**Solutions Data**" means, depending on the Solution deployed, the operational system log data and any other information provided by Customer in furtherance of its use of the Solutions and which Customer may elect to submit to Arctic Wolf through the Solutions, including, but not limited to operational values, event logs, and network data such as flow, HTTPS, TLS, DNS metadata, cursory inventory data, operating systems and versions, users and groups from Active Directory, system level inventory, event data, and network vulnerability data, but excluding Threat Intelligence Data (as defined below). As between the parties, Customer shall retain all right, title, and interest (including any and all intellectual property rights) in and to the Solutions Data (excluding any Arctic Wolf Technology used with the Solutions Data). Customer hereby grants Arctic Wolf, during the term of the Agreement, a non-exclusive, worldwide, royalty-free right to collect, use, copy, store, transmit, modify, and create derivative works of the Solutions Data solely to the extent necessary to provide the Solutions to Customer. The location of the storage of raw Solutions Data within Arctic Wolf's third-party service providers' data centers will be as set forth in the Solutions Terms.

7.3 Threat Intelligence Data. "**Threat Intelligence Data**" means any malware, spyware, virus, worm, trojan, or other potentially malicious or harmful code or files, URLs, DNS data, public IP addresses, network telemetry, commands, processes or techniques, tradecraft used by threat actors, metadata, or other information or data, in each case that is potentially related to unauthorized third parties associated therewith and that: (i) Customer provides to Arctic Wolf in connection with this Agreement, or (ii) is collected or discovered during the course of Arctic Wolf providing Solutions, excluding any such information or data that identifies Customer or to the extent that it includes Personal Data (as defined below) of the data subjects of Customer (but including personal information of threat actors).

8. Data Privacy.

8.1 Personal Information. Point of Contact Information, Solutions Data, Learner Data, and Phishtel Data (or any other Confidential Information provided by Customer) may include information that identifies, relates to, describes, is reasonably capable of being associated with or linked to a particular individual, whether directly or indirectly ("**Personal Information**"). Customer is responsible for the lawfulness of any such Personal Information and the receipt, use, and processing of it under the Agreement. Customer represents and warrants that, where it provides Personal Information to Arctic Wolf or requests Arctic Wolf collect or process such information, it (1) has complied with any applicable laws relating to the collection or provision of such information, (2) possesses any consents, authorizations, rights and authority, and has given all required notices to individual data subjects as are required to transfer or permit Arctic Wolf to collect, receive, or access any Personal Information for the Solutions, and (3) to the extent required by applicable law, informed the individuals of the possibility of Arctic Wolf processing their Personal Information on Customer's behalf and in accordance with its instructions.

8.2 European Union and United Kingdom General Data Protection Regulation. If and to the extent Customer submits to Arctic Wolf personal data (as that term is defined under the General Data Protection Regulation ("**GDPR**") of individuals located in the European Economic Area or United Kingdom, the Arctic Wolf Data Processing Agreement available at <https://arcticwolf.com/terms/dpa/>, as may be updated by Arctic Wolf from time-to-time in accordance with its terms (the "**DPA**"), may be executed by Customer and upon execution and return to Arctic Wolf in accordance with its terms will be incorporated into this Agreement. It is Customer's sole responsibility to notify Arctic Wolf of requests from data subjects related to the modification, deletion, restriction and/or objection of personal data. Customer represents and warrants that any processing of personal data in accordance with its instructions is lawful.

8.3 California Consumer Privacy Act. The parties acknowledge and agree that Arctic Wolf is a service provider for the purposes of the California Consumer Privacy Act, as supplemented by the California Privacy Rights Act (collectively, the "**CCPA**") and may receive personal information (as defined by the CCPA) from Customer pursuant to this Agreement for a business purpose. The parties agree to always comply with the applicable provisions of the CCPA in respect to the collection, transmission, and processing of all personal information (as defined by

the CCPA) exchanged or shared pursuant to the Agreement. Arctic Wolf shall not (i) sell any such personal information; (ii) retain, use or disclose any personal information provided by Customer pursuant to this Agreement except as necessary for the specific purpose of performing the Solutions for Customer pursuant to this Agreement or as permitted by the CCPA; (iii) retain, use, or disclose such personal information for a commercial purpose other than providing the Solutions unless otherwise explicitly permitted under the Agreement; (iv) retain, use, or disclose such personal information outside of the direct business relationship between Customer and Arctic Wolf unless otherwise permitted under the Agreement; or (v) combine any such personal information with personal information that it receives from or on behalf of any other person(s) or collects from its own interaction with the consumer, provided that Arctic Wolf may combine personal information to perform any business purpose as defined in and as permitted under the CCPA. The terms "personal information," "service provider," "sale," "share," and "sell" are as defined in Section 1798.140 of the CCPA. Arctic Wolf certifies that it understands the restrictions of this Section 8.3 and will notify Customer if Arctic Wolf decides that it can no longer meet its obligations under the CCPA. It is Customer's sole responsibility to notify Arctic Wolf of any requests from consumers (as defined in the CCPA) seeking to exercise rights afforded in the CCPA regarding personal information received or processed in connection with the Solutions. Arctic Wolf agrees to provide reasonable cooperation to Customer in connection with such requests.

8.4 Canadian Privacy Laws. If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined under applicable Canadian privacy laws, being all applicable federal, and provincial laws and regulations relating to the processing, protection or privacy of personal information ("**Privacy Laws**")), of individuals located in Canada, Customer agrees that it is solely responsible for and shall obtain from all such individuals, all required consents and/or provide all required notifications, regarding the collection, use, disclosure, and processing of their personal information by Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of Canada), and/or the transfer by Customer of such individual's personal information to Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of Canada). Upon request of Customer, Arctic Wolf will inform Customers of the locations to which the personal information is transferred and processed by Arctic Wolf and/or its subcontractors/third party service providers.

Customer retains control of the personal information and remains solely responsible for its compliance with Privacy Laws and for the processing instructions it gives to Arctic Wolf. The parties agree that this Agreement, together with Customer's use of the Solution in accordance with this Agreement, constitutes Customer's instructions to Arctic Wolf in relation to the processing of such personal information. Subject to Section 8.1 of this Agreement, Arctic Wolf will only process the personal information to the extent, and in such a manner, as is necessary for the performance of the Solutions. Arctic Wolf will reasonably assist Customer with meeting the Customer's compliance obligations under applicable Privacy Laws, considering the nature of Arctic Wolf's processing and the information available to Arctic Wolf.

Arctic Wolf shall:

- Comply with its obligations as a third-party service provider/mandatory under applicable Privacy Laws, including by implementing appropriate technical, physical and organizational measures to safeguard the personal information;
- Periodically conduct audits of its information security controls for facilities and systems used to deliver the Solutions and make relevant audit reports available to Customer for review. The Customer will treat such audit reports as Arctic Wolf's Confidential Information;
- Within seventy-two (72) hours of discovery notify Customer of any unauthorized or unlawful access to or processing of the personal information;
- Limit access to those employees who require the personal information access to meet Arctic Wolf's obligations under this Agreement and ensure that all employees are informed of the personal information's confidential nature;
- Notify Customer if it receives any complaint, notice, or communication that directly or indirectly relates to the personal information processing or to either party's compliance with Privacy Laws, and provide its full co-operation and assistance in responding to such complaint, notice or communication; and
- Upon Customer's request, provide the Customer a copy of or access to all or part of the Customer's personal information in its possession or control in the format reasonably agreed to by the parties.

8.5 Australian Privacy Laws. If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined in the *Australian Privacy Act 1988* (Cth)) on your behalf, as agent for you, Arctic Wolf will only handle your personal information for the purpose of performing the Solutions, in accordance with the Privacy Notice or as required by applicable law, and ensuring you have access to your Solutions Data in accordance with this Agreement. Customer will maintain effective control of how Solutions Data is handled by retaining the right to access, changing and retrieving Solutions Data, limiting others' use of Solutions Data and specifying security measures that are used in relation to Solutions Data as set forth in this Agreement, including the Privacy Notice.

8.6 South African Privacy Laws. If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined in the Protection of Personal Information Act, 4 of 2013) of individuals located in South Africa, Customer agrees that it is solely responsible for and shall obtain from all such individuals, all required consents and/or provide all required notifications, regarding the collection, use, disclosure, and processing of their personal information by Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of South Africa, and/or the transfer by Customer of such individual's personal information to Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of South Africa). Upon request of Customer, Arctic Wolf will inform Customers of the locations to which the personal information is transferred and processed by Arctic Wolf and/or its subcontractors/third party service providers. Arctic Wolf will only handle personal information for the purpose of performing the Solutions and ensuring Customer has access to its Solutions Data in accordance with this Agreement. Customer will maintain effective control of how Solutions Data is handled by retaining the right to access, changing, and retrieving Solutions Data, limiting others' use of Solutions Data. Arctic Wolf shall take appropriate, reasonable technical and organizational security measures to prevent the loss of, damage to or unauthorized destruction of personal information, and the unlawful access to or processing of personal information.

9. Indemnity.

9.1 Arctic Wolf's Indemnity. Subject to Section 9.3, Arctic Wolf will defend and indemnify Customer from any unaffiliated third party claim or action to the extent based on the allegation that the Solutions infringe any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) having effect in the United States, Canada, Australia, United Kingdom, Switzerland, and the European Union. Arctic Wolf will pay any settlements that Arctic Wolf agrees to in a writing signed by an authorized officer

of Arctic Wolf or final judgments awarded to the third-party claimant by a court of competent jurisdiction. The foregoing obligations do not apply with respect to the Solutions, or portions or components thereof, that are: (a) not provided by Arctic Wolf; (b) combined with other products, processes or materials that are not reasonably contemplated by the Documentation where the alleged infringement relates to such combination; (c) modified other than with Arctic Wolf's express consent; (d) used after Arctic Wolf's notice to Customer of such activity's alleged or actual infringement; or (e) not used by Customer in strict accordance with this Agreement or the published Documentation. The indemnification obligations set forth in this Section 9.1 are Arctic Wolf's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

9.2 Customer Indemnity. Subject to Section 9.3, Customer agrees to defend and indemnify Arctic Wolf from any third-party claim or action brought against Arctic Wolf to the extent based on Customer's alleged breach of Sections 5 or 8. Customer agrees to pay any settlements that Customer agrees to in a writing signed by an authorized officer of Customer or final judgments awarded to the third-party claimant by a court of competent jurisdiction.

9.3 Procedures. Each party's indemnification obligations are conditioned on the indemnified party: (a) providing the indemnifying party with prompt written notice of any claim, provided that the failure to provide such notice shall only limit the indemnifying party's obligation to indemnify to the extent that the failure prejudices the indemnifying party in its defense of the claim; (b) granting the indemnifying party the sole control of the defense or settlement of the claim; and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense. Notwithstanding the foregoing, the indemnifying party (i) may not make an admission of fault on behalf of the other party without written consent, (ii) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (iii) the other party may join in the defense with its own counsel at its own expense.

9.4 Options. If Customer's use of the Solutions has become, or in Arctic Wolf's opinion is likely to become, the subject of any claim of infringement, Arctic Wolf may at its option and expense: (a) procure for Customer the right to continue using and receiving the Solutions as set forth hereunder; (b) replace or modify the Solutions to make them non-infringing; (c) substitute an equivalent for the Solutions; or (d) if Arctic Wolf, in its sole discretion, determines that options (a)-(c) are not reasonably practicable, terminate this Agreement and refund any pre-paid unused Fees as of the effective date of termination.

10. Warranty and Warranty Disclaimer.

10.1 Solutions Warranty. ARCTIC WOLF WARRANTS THAT DURING THE SUBSCRIPTION TERM AND PROVIDED THAT CUSTOMER IS NOT IN BREACH OF THIS AGREEMENT OR AS OTHERWISE PROHIBITED BY CONSUMER PROTECTION LAWS INCLUDING ANY CUSTOMER RIGHTS UNDER SUCH CONSUMER PROTECTION LAWS THAT: (I) THE SOLUTIONS PROVIDED UNDER THIS AGREEMENT DO NOT INFRINGE OR MISAPPROPRIATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; (II) THE SOLUTIONS SHALL SUBSTANTIALLY PERFORM AS DESCRIBED IN THE DOCUMENTATION; AND (III) IT WILL COMPLY WITH ALL FOREIGN, PROVINCIAL, FEDERAL, STATE AND LOCAL STATUTES, LAWS, ORDERS, RULES, REGULATIONS AND REQUIREMENTS, INCLUDING THOSE OF ANY GOVERNMENTAL (INCLUDING ANY REGULATORY OR QUASI-REGULATORY) AGENCY APPLICABLE TO ARCTIC WOLF AS IT PERTAINS TO ITS OBLIGATIONS AND THE DATA REQUIRED FOR THE PERFORMANCE OF THE SOLUTIONS DESCRIBED HEREIN. IN THE EVENT OF ANY BREACH OF THIS SECTION 10.1, ARCTIC WOLF SHALL, AS ITS SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY (OTHER THAN ARCTIC WOLF'S INDEMNIFICATION OBLIGATIONS IN SECTION 9.1 ABOVE, OR OTHERWISE PROHIBITED BY CONSUMER PROTECTION LAWS OR PROVIDED IN SECTION 10.3 OF THIS AGREEMENT), REPAIR OR REPLACE THE SOLUTIONS THAT ARE SUBJECT TO THE WARRANTY CLAIM AT NO COST TO CUSTOMER OR IF ARCTIC WOLF IS UNABLE TO REPAIR OR REPLACE, THEN ARCTIC WOLF WILL REFUND ANY PRE-PAID FEES FOR THE SOLUTIONS, OR PARTS THEREOF, SUBJECT TO THE WARRANTY CLAIM. EXCEPT FOR THE WARRANTIES DESCRIBED IN THIS SECTION, THE SOLUTIONS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE. CUSTOMER ACKNOWLEDGES THAT THE SOLUTIONS ARE PROVIDED "AS IS" AND FURTHER ACKNOWLEDGES THAT ARCTIC WOLF DOES NOT WARRANT: (A) THE OPERATION OF THE SOLUTIONS WILL BE UNINTERRUPTED, OR ERROR FREE; AND (B) THE SOLUTIONS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE. CUSTOMER IS RESPONSIBLE AND ARCTIC WOLF SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT THE USE OF THE SOLUTIONS COMPLIES WITH APPLICABLE LAWS IN THE JURISDICTION(S) IN WHICH CUSTOMER MAY DEPLOY AND USE THE SOLUTIONS.

10.2 No Guarantee. CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT ARCTIC WOLF DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, OR DISCOVER ALL OF CUSTOMER'S SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, OR THAT ALL SUCH SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE CAN OR WILL BE CONTAINED OR UNCONTAINED IN THE DELIVERY OF THE SOLUTIONS. CUSTOMER ACKNOWLEDGES THAT CERTAIN FEATURES AND ACTIVITIES PERFORMED BY ARCTIC WOLF AND MORE FULLY DESCRIBED IN THE SOLUTIONS TERMS COULD POSSIBLY RESULT IN INTERRUPTIONS OR DEGRADATION TO CUSTOMER'S SYSTEMS AND ENVIRONMENT AND ACCEPTS THOSE RISKS AND CONSEQUENCES. CUSTOMER ASSUMES ALL RISKS IN USING THIRD-PARTY SYSTEMS OR SERVICES IN CONNECTION WITH THE DELIVERY OF THE SOLUTIONS.

10.3 Open Source Warranty. The Software may include Open Source Software. To the extent included in the Software, Open Source Software is governed solely by the applicable open source licensing terms, if any, and is provided "AS IS", and Arctic Wolf hereby disclaims all copyright interest in such Open Source Software. Arctic Wolf provides no warranty specifically related to any Open Source Software or any applicable Open Source Software licensing terms. Any fees paid by Customer to Arctic Wolf are for Arctic Wolf's proprietary Software only, and not for any Open Source Software components of the Software. Any license associated with an Open Source Software component applies only to that component and not to Arctic Wolf's proprietary Software or any other third-party licensed software. The foregoing language is not intended to limit Arctic Wolf's warranty obligation for the Solutions set forth in Section 10.1. "Open Source Software" means software with its source code made available pursuant to a license by which, at a minimum, the copyright holder provides anyone the rights to study, change, and/or distribute the software to anyone and for any purpose.

10.4 Third-Party Product. Third-Party Product (as defined in this Section 10.4) may carry a limited warranty from the third-party publisher, provider, or original manufacturer of such Third-Party Products. To the extent required or allowed, Arctic Wolf will pass through to Customer or directly manage for the benefit of Customer's use of the Third-Party Products as part of the Solutions (such decision to be made in Arctic Wolf's discretion), the manufacturer warranties related to such Third-Party Products. "Third-Party Product" means any non-Arctic Wolf branded products and services (including Equipment, and any operating system software included therewith) and non-Arctic Wolf-licensed software products, including Open Source Software.

10.5 Customer Warranties. Customer represents and warrants that it shall: (i) be responsible for ensuring the security and confidentiality of all Administrator IDs and passwords; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Solutions; (iii) notify Arctic Wolf promptly upon discovery of any unauthorized use of the Solutions or any breach, or attempted breach, of security of the Solutions; (iv) not violate any foreign, provincial, federal, state and local statutes, laws, orders, rules, regulations and requirements applicable to Customer's performance of its obligations herein, including those of any governmental (including any regulatory or quasi-regulatory) agency, Trade Control laws, and regulations and the U.S. Foreign Corrupt Practices Act (the "**FCPA**"); (v) not use the Solutions and transfer any Solutions Data to Arctic Wolf for any fraudulent purposes; and (vi) implement safeguards within Customer's environment to protect the Solutions, including specifically, the Equipment, from the introduction, whether intentional or unintentional, of: (1) any virus or other code, program, or sub-program that damages or interferes with the operation of the Equipment or halts, disables, or interferes with the operation of the Solutions; or (2) any device, method, or token whose knowing or intended purpose is to permit any person to circumvent the normal security of the Solutions. Customer authorizes Arctic Wolf to perform Services (and all such tasks and tests reasonably contemplated by or reasonably necessary to perform the Services) on network resources with the internet protocol addresses or other designated identifiers identified by Customer. Customer represents that, if Customer does not own such network resources, it will have obtained consent and authorization from the applicable third party to permit Arctic Wolf to provide the Services on such third party's network resources.

11. Limitation of Liability.

11.1 TO THE FULL EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 11.2 BELOW, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, ARCTIC WOLF WILL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR: (A) DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SOLUTIONS, LOST REVENUES OR PROFITS, LOSS OF SOLUTIONS, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES BY AN AUTHORIZED PARTNER, OR BREACHES IN CUSTOMER'S SYSTEM SECURITY; OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (C) ANY AMOUNTS THAT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT ARCTIC WOLF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BOTH PARTIES UNDERSTAND AND AGREE THAT THE LIMITATIONS OF LIABILITIES FOR EACH PARTY SET FORTH IN THIS AGREEMENT ARE REASONABLE AND THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT WITHOUT SUCH LIMITATIONS. THE FOREGOING LIMITATIONS OF LIABILITY IN THIS SECTION 11, WITH RESPECT TO ARCTIC WOLF AUSTRALIAN CUSTOMERS, ARE SUBJECT TO THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2* AND SECTION 11.2 OF THIS AGREEMENT.

11.2 FOR CUSTOMERS DEEMED "CONSUMERS" AS DEFINED BY THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2*, SECTION 11.1 IS REPLACED IN ITS ENTIRETY WITH THE FOLLOWING:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ARCTIC WOLF SHALL NOT BE LIABLE TO CUSTOMER (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (A) ANY LOST PROFITS, REVENUE, OR SAVINGS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ARCTIC WOLF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE; OR (B) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THESE TERMS. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.2. THIS SECTION 11.2 DOES NOT SEEK TO LIMIT OR EXCLUDE THE LIABILITY OF ARCTIC WOLF OR ITS AFFILIATES IN THE EVENT OF DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY FOR WHICH IT IS NOT PERMITTED BY LAW TO EXCLUDE. TO THE EXTENT APPLICABLE, THIS PROVISION MUST BE READ SUBJECT TO THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2*.

12. Term and Renewal. This Agreement shall be in effect for the Subscription Term specified in the Order Form. Unless otherwise set forth on the Order Form, the Subscription Term for the Solutions, in its entirety, will automatically renew at the end of the initial Subscription Term for the same period of time as the initial Subscription Term, but in no event more than a twelve (12) month term, and subject to the then-current terms and price at the time of renewal; provided however, if either party would like to opt out of automatic renewal of the Subscription of the Solutions or reduce Subscription scope, then such party must notify the other party no less than sixty (60) days prior to the expiration of the then-current Subscription Term.

13. Updates. Arctic Wolf reserves the right to modify this Agreement, the Terms, and the Documentation in Arctic Wolf's sole discretion provided that changes shall not materially decrease the Solutions features and functionalities that Customer has subscribed to during the then-current Subscription Term. Should Arctic Wolf make any modifications to the Agreement, the Terms, or Documentation, Arctic Wolf will post the amended terms on the applicable URL links and will update the "**Last Updated Date**" within such documents and notify Customer via email, the Customer newsletter or such other written communication method implemented by Arctic Wolf from time-to-time. Customer may notify Arctic Wolf within 30 days after the effective date of the change of its rejection of such change. If Customer notifies Arctic Wolf of its rejection during

such thirty (30) day period, then Customer will remain governed by the terms in effect immediately prior to the change until the end of Customer's then-current Subscription Term. However, any subsequent renewal of the Subscription Term will be renewed under the then-current terms, unless otherwise agreed in writing by the parties.

14. Termination. Either party may terminate this Agreement for cause if the other party commits a material breach of this Agreement, provided that such terminating party has given the other party ten (10) days advance notice to try and remediate the breach. Upon termination, Customer agrees to cease all use of the Arctic Wolf Technology, installed or otherwise, and permanently erase or destroy all copies of any Arctic Wolf Technology, including all Content and virtual Equipment, that are in its possession or under its control and promptly remove and return all physical Equipment to Arctic Wolf. Except as otherwise required by law, Arctic Wolf will remove, delete, or otherwise destroy all copies of Confidential Information in its possession upon the earlier of (i) the return of the Equipment, if applicable, to Arctic Wolf, or (ii) one hundred-twenty (120) days following termination. Notwithstanding anything contrary in this Agreement, should Customer fail to return any Equipment within ninety (90) days following discontinuation of use of the Equipment or termination or expiration of this Agreement, Customer will be liable for the replacement cost of the Equipment, which shall be due and owing upon receipt of the invoice from Arctic Wolf or the Authorized Partner, and Customer shall be liable for any breach of the Confidential Information and Arctic Wolf Technology contained within the unreturned Equipment. Sections 6 through 13, 14, and 15 will survive the non-renewal or termination of this Agreement.

15. Miscellaneous.

15.1 Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the next business day after the date sent, if sent for overnight delivery by a generally recognized international courier (e.g., FedEx, UPS, DHL, etc.) (receipt requested); or (c) on the date sent by e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. For contractual purposes, Customer (1) consents to receive communications in an electronic form via the email address it provides via the Customer Portal; and (2) agrees that all agreements, notices, disclosures, and other communications that Arctic Wolf provides electronically satisfies any legal requirement that those communications would satisfy if they were on paper. This Section does not affect Customer's non-waivable rights. Arctic Wolf's address for notification purposes shall be: PO Box 46390, Eden Prairie, MN 55344, legal@arcticwolf.com. Customer's address for notification purposes shall be as set forth on the Order Form. Either party may update its notice address upon written notice to the other party.

15.2 Notwithstanding any other terms to the contrary contained herein, Customer grants Arctic Wolf the right to use Customer's name or logo in customer lists, marketing materials, and verbal discussions with prospective customers to communicate that Customer uses the Solutions. If Arctic Wolf intends to disclose information about Customer's purchase(s) (such as dollar amount of sale or project objectives) in conjunction with the use of Customer's name or logo, Arctic Wolf will obtain Customer's prior written or email approval.

15.3 The parties to this Agreement are independent contractors. Neither party has the authority to bind the other party without the express written authorization of the other party. Nothing herein may be construed to create an employer-employee, franchisor-franchisee, agency, partnership, or joint venture relationship between the parties. Arctic Wolf shall be primarily liable for the obligations of its Affiliates and any subcontractors used in the delivery of the Solutions.

15.4 This Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Customer shall not be entitled to assign, subcontract, delegate or otherwise transfer any of its rights and/or duties arising out of this Agreement and/or parts thereof to third parties, voluntarily or involuntarily, including by change of control, operation of law or any other manner, without Arctic Wolf's express prior written consent. Any purported assignment, subcontract, delegation, or other transfer in violation of the foregoing shall be null and void. No such assignment, subcontract, delegation, or other transfer shall relieve the assigning party of any of its obligations hereunder.

15.5 The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law provisions thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Santa Clara County, California in English and in accordance with the JAMS International Arbitration Rules then in effect. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), provided that a permanent injunction and damages shall only be awarded by the arbitrator(s). In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.

15.6 Each party acknowledges and agrees that any dispute or claim that may arise out of or relate to this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Further, each party agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within one year after such claim or cause of action arose.

15.7 No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

15.8 If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. The parties agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purpose of such void or unenforceable provision. Arctic Wolf does not accept, expressly or impliedly, and rejects and deems deleted any additional or different

terms or conditions that Customer presents, including, but not limited to, any terms or conditions contained Customer's purchase order, or other such document, or established by trade usage or prior course of dealing.

15.9 This Agreement (including the exhibits hereto, if any, and any BAA (as defined in Section 15.10 below)) constitutes the parties' entire agreement by and between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding by and among the parties with respect to such subject matter. Except as otherwise provided herein, this Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party.

15.10 In the event that Arctic Wolf receives personal healthcare information in the delivery of the Solutions, the parties agree to comply with the Business Associate Addendum ("**BAA**") located at <https://arcticwolf.com/terms/business-associate-addendum/> or such other equivalent agreement/addendum as required under applicable health information/privacy laws. In the event the parties have entered into a BAA or equivalent agreement in relation to protected health information, the parties intend for both this Agreement and BAA or equivalent agreement to be binding upon them and the BAA or equivalent agreement is incorporated into this Agreement by reference.

15.11 The parties have participated mutually in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted mutually by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

15.12 The parties have agreed that this Agreement as well as any notice, document or instrument relating to it be drawn up in English only; *les parties aux présentes ont convenu que la présente convention ainsi que tous autres avis, actes ou documents s'y rattachant soient rédigés en anglais seulement.*

CRADLEPOINT

Warranty Statement

March 2023

Cradlepoint Warranty Statement

Cradlepoint Netcloud Package Limited Lifetime Hardware Warranty as described below and within this web link <https://customer.cradlepoint.com/s/article/cradlepoint-warranty>.

All hardware products sold as components of Cradlepoint NetCloud Packages (including MC400 modems and docks) include a limited warranty against defects in materials and workmanship through Last Date of Support when used in accordance with Cradlepoint's product documentation and provided the hardware products are under a continuous, fully paid-up subscription license to NetCloud Manager services. Cradlepoint's limited hardware product warranty is non-transferable and extends only to the original purchaser of the products from an Authorized Cradlepoint Partner.

Notwithstanding the foregoing, antennas, batteries and power supplies include a limited warranty against defects in materials and workmanship to the original purchaser for a period of one (1) year from the date of shipment, regardless of whether it is sold as a component of a NetCloud Package.

Cradlepoint's warranty is limited to a repair or replacement of the hardware product, at Cradlepoint's discretion, as original purchaser's sole and exclusive remedy. Cradlepoint does not warrant that the operation of the hardware product will meet original purchaser's requirements or be error free. This warranty does not cover any failure of the product due to normal wear and tear, misuse (including but not limited to use in other than a normal and customary manner in accordance with Cradlepoint's instructions for use and maintenance of the product), accident, modification or adjustment, acts of God, improper ventilation, or damage resulting from liquid.

The specific written warranties set forth in this warranty statement are in lieu of any other warranties whatsoever. Except as set forth herein, Cradlepoint disclaims all other representations, warranties, and conditions, whether expressed or implied, with respect to the hardware products, including any warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties arising from a course of dealing, usage or trade practice. To obtain warranty service, the original purchaser must first call Cradlepoint for a Return Materials Authorization ("RMA") number, then return the properly packaged product to Cradlepoint for repair or replacement as required.

Disclaimer and Limitation of Liability

The remedies provided herein are the purchaser's sole and exclusive remedies. Cradlepoint and its affiliates hereby specifically disclaim liability for any and all: (a) direct, indirect, special, general, incidental, consequential, punitive or exemplary damages, including without limitation for loss of profits or revenue or of anticipated profits or revenue arising out of the use or inability to use the product, even if Cradlepoint and/or its affiliates have been advised of the possibility of such damages, and even if such damages are foreseeable; or (b) claims by any third party. notwithstanding the foregoing, in no event shall the aggregate liability of cradlepoint and/or its affiliates arising under or in connection with the product, however arising, regardless of the number of events, occurrences, or claims giving rise to liability, exceed the price paid by the original purchaser of the product. the limitations of liability set forth herein shall

remain in full force and effect regardless of whether the remedies hereunder are determined to have failed of their essential purpose.

Cradlepoint's warranty is subject to change without notice and does not represent any commitment on the part of Cradlepoint or its affiliates. This warranty shall be governed by the laws of the State of Idaho and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Idaho.

Published Date: October 2020

Process and procedures of obtaining customer support

Cradlepoint technical support and customer service technicians are located at our global headquarters in Boise, Idaho. Cradlepoint's support team has direct access to the R&D team that builds the NetCloud Service and Devices. These enterprise support engineers, and technical specialists have their own certifications, deep experience, and skills in solving network issue in organizations like yours.

Customer Support Team

Cradlepoint Technical Support and Customer Service technicians work together, our Customer Service technicians are required to escalate to Technical Support Engineers when a technical issue is identified.

Monitoring

Cradlepoint provides Support Service Level Targets. Cradlepoint Global Support offers world-class resources and expertise to keep your network secure, simple, and efficient. With Cradlepoint Support, you have access to our team for assistance with any technical issues. Cradlepoint tracks questions and assistance requests for customers with Cradlepoint products covered by Warranty or a NetCloud Solution Package through a service request process. This is typically done by contacting the Cradlepoint Global Support team or by opening a support case through the Connect portal. As cases are opened, information about the customer site and technical details about the product, service and environment will be collected. A "Case Severity" will be assigned for each case. The Case Severity is defined by the impact to the customer and the type of problem. It helps define the response time, communication cadence, and acts as a guide to further escalations. Setting these levels allows Cradlepoint to resolve issues in a timely manner for more customers.

Expected Response Times

Cradlepoint provides customer service and technical support 24/7/365 via phone, chat or customer portal. We hold ourselves to a high standard which is proven time and again by our industry leading averages on problem close rates and resolutions. Hold times on phone support averages 2-minutes. Cradlepoint tracks customer support requests through a mature, enterprise grade case management system. As cases are opened, information about the customer site and technical details about the product, service and environment will be collected. Cradlepoint provides free firmware and software updates for the life of the services and Cradlepoint's warranty is limited to a repair or replacement of the hardware product.

JABRA

Warranty & Service Information

WARRANTY & SERVICE INFORMATION

BUSINESS PRODUCTS

Limited One (1), Two (2) or Three (3) Year Warranty

GN Netcom, Inc. ("GN") warrants to the first end-user purchasing the product from a distributor or reseller ("GN Partner"), that the product shall be free from defects in materials and workmanship subject to the terms set forth below ("Warranty") for a period of ("Warranty Period"):

- **Cordless products:** one (1) year from the date the products have been purchased
- **Corded products:** two (2) years from the date the products have been purchased
- **BIZ 2400:** three (3) years from the date the products have been purchased

If the product is sold or otherwise transferred to another party, the Warranty will automatically terminate prior to expiration. Furthermore, the Warranty will terminate immediately if the product is (a) altered, repaired, or maintained by anyone other than GN or a GN Partner which is authorized to do GN warranty work, whether or not successful, or (b) being used together with non-GN branded or certified accessories or other peripheral equipment.

During the Warranty Period, GN will, at GN's sole discretion (a) repair the product using new or refurbished parts, (b) replace the product with a new or refurbished product, or (b) refund the purchase price paid ("Warranty Service"). The Warranty sets forth the extent and limit of GN's obligations towards the end-user except as modified by applicable law.

Warranty on replaced or repaired products is twelve (12) months, OR the rest of the original Warranty Period, whatever is longest.

As part of GN's efforts to reduce environmental waste the product may consist of reconditioned equipment that contain used components, some of which may have been reworked. The used components meet GN's high quality standards and comply with GN's product performance and reliability specifications. Defective parts or products replaced by or returned to GN during the Warranty Period become the property of GN.

How to Obtain Warranty Service To obtain Warranty Service, please contact the GN Partner from which the product was purchased.

The product must be returned in its original packaging, if possible, or packaging affording an equal degree of protection. During the Warranty Period, except where prohibited by applicable law, the end-user will bear the cost of shipping the product to GN or such other place as GN may direct. If the product is covered by the Warranty, GN will bear the cost of return shipping after service has been completed. Return shipping will be charged to the end-user for products not covered by the Warranty or requiring no warranty repair. Damage occurred during shipment is deemed the responsibility of the carrier, and any claim should be

made directly to said carrier.

The following information must be presented to obtain Warranty Service:

1. The defective product,
2. The end-user's name, company name if applicable, address, Email address and telephone number,
3. A description of the problem, and
4. Proof of purchase which clearly indicates the name and address of the GN Partner, date of purchase, product type and model number. Without proof of purchase, the Warranty Period will commence on the date labeled on the product.

Consumable Components and Accessories Exempt From WarrantyLimited-life consumable components and accessories subject to normal wear and tear are exempt from Warranty, unless they are found to be defective or broken upon purchase of the product. This includes among others:

- Basic QD to modular plug cords
- Basic QD to device specific plug cords
- Basic USB cords
- Adapter plugs
- LINK Mobile cords
- Modular RJ9 to RJ9 cords
- Busylight
- Headbands
- Neckbands
- Ear cushions
- Ear tips
- Ear hooks
- Headset stands
- Microphone windscreens
- Decorative finishes
- Foam products
- Removable batteries

Consumable components and accessories that malfunction within fourteen (14) days after they have been purchased are deemed to have been defective or broken upon purchase.

Limitations of WarrantyThis Warranty only applies to products purchased for use, not for resale. This Warranty is invalid if the factory-applied serial number, date code label, and/or product label has been altered or removed from the product.

This Warranty only applies to defective factory material and factory workmanship and does not cover defects or damages caused by or attributable to (a) improper storage or faulty installation and operation;

misuse or abuse; accident or neglect, (b) contact with any liquid, (c) use of the product or accessories for commercial purposes, or subjecting the product or accessories to improper or abnormal usage or conditions, or (d) other acts which are not the fault of GN, including matters attributable to a GN Partner.

This Warranty does not apply to products which have not been charged for six (6) months. If the battery in a product has not been charged for a period of six (6) months, the product might not function or regain its full potential and long-term performance. GN does not offer any warranty for such performance.

It is the end-user's responsibility to operate and care for the product in accordance with the instructions and specifications supplied with the product. Repairs resulting from failure to do so are not covered by the Warranty.

REPAIRS, REPLACEMENTS OR REFUNDING AS PROVIDED UNDER THIS WARRANTY ARE THE EXCLUSIVE REMEDY OF THE END-USER. NEITHER GN NOR YOUR GN PARTNER SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY ON THE PRODUCT, INCLUDING WITHOUT LIMITATION COMMERCIAL LOSS, INCIDENTAL EXPENSES, LOSS OF TIME, OR INCONVENIENCE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE.

NOTE! The Warranty gives the end-user specific legal rights. The end-user may also have other rights which vary from state to state or country to country. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or implied warranties, so the above exclusions may not apply. The Warranty does not affect statutory legal rights under applicable national or local laws.

LENOVO

Warranty Statement

Lenovo Statement of Limited Warranty

Part 1 - General Terms

*This Statement of Limited Warranty includes Part 1 - General Terms, Part 2 - Country-unique Terms, and Part 3 - Warranty Information. The terms of Part 2 replace or modify those of Part 1. The warranties provided by Lenovo Group Limited or one of its subsidiaries (called "Lenovo") in this Statement of Limited Warranty apply only to Machines you purchase for your use, and not for resale. The term "Machine" means a Lenovo machine, its options, features, conversions, upgrades or peripheral products, or any combination of them. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently or otherwise. **Nothing in this Statement of Limited Warranty affects any statutory rights of consumers that cannot be waived or limited by contract.***

What this Warranty Covers

Lenovo warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to Lenovo's Official Published Specifications ("Specifications") which are available on request. The warranty period for the Machine starts on the original date of installation and is specified in Part 3 - Warranty Information. The date on your invoice or sales receipt is the date of installation unless Lenovo or your reseller informs you otherwise. Unless Lenovo specifies otherwise, these warranties apply only in the country or region in which you purchased the Machine.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

What this Warranty Does not Cover

This warranty does not cover the following:

- any software programs, whether pre-loaded or shipped with the Machine, or installed subsequently;
- failure resulting from misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- failure caused by a product for which Lenovo is not responsible; and
- any non-Lenovo products, including those that Lenovo may procure and provide with or integrate into a Lenovo Machine at your request.

The warranty is voided by removal or alteration of identification labels on the Machine or its parts.

Lenovo does not warrant uninterrupted or error-free operation of a Machine.

Any technical or other support provided for a Machine under warranty, such as assistance with "how-to" questions and those regarding Machine set-up and installation, is provided **WITHOUT WARRANTIES OF ANY KIND**.

How to Obtain Warranty Service

Warranty service may be provided by Lenovo, IBM, your reseller if authorized to perform warranty service, or an authorized warranty service provider. Each of them is referred to as a "Service Provider."

If the Machine does not function as warranted during the warranty period, contact a Service Provider. If you do not register the Machine with Lenovo, you may be required to present proof of purchase as evidence of your entitlement to warranty service.

What Lenovo Will Do to Correct Problems

When you contact a Service Provider for service, you must follow the problem determination and resolution procedures that we specify. An initial diagnosis of your problem can be made either by a technician over the telephone or electronically by access to a support website.

The type of warranty service applicable to your Machine is specified in Part 3 - Warranty Information.

You are responsible for downloading and installing designated software updates from a support web site or from other electronic media, and following the instructions that your Service Provider provides. Software updates may include basic input/output system code (called "BIOS"), utility programs, device drivers, and other software updates.

If your problem can be resolved with a Customer Replaceable Unit ("CRU") (e.g., keyboard, mouse, speaker, memory, hard disk drive), your Service Provider will ship the CRU to you for you to install.

If the Machine does not function as warranted during the warranty period and your problem cannot be resolved over the telephone or electronically, through your application of software updates, or with a CRU, your Service Provider, will either, at its discretion, 1) repair it to make it function as warranted, or 2) replace it with one that is at least functionally equivalent. If your Service Provider is unable to do either, you may return the Machine to your place of purchase and your money will be refunded.

As part of the warranty service, your Service Provider may also install selected engineering changes that apply to the Machine.

Exchange of a Machine or Part

When the warranty service involves the exchange of a Machine or part, the item your Service Provider replaces becomes Lenovo's property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item.

Your Additional Responsibilities

Before your Service Provider exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under warranty service.

You also agree to:

1. ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
2. obtain authorization from the owner to have your Service Provider service a Machine that you do not own; and
3. where applicable, before service is provided:
 - a. follow the service request procedures that your Service Provider provides;
 - b. backup or secure all programs, data, and funds contained in the Machine; and

- c. provide your Service Provider with sufficient, free, and safe access to your facilities to permit Lenovo to fulfill its obligations.
4. (a) ensure all information about identified or identifiable individuals (Personal Data) is deleted from the Machine (to the extent technically possible), (b) allow your Service Provider or a supplier to process on your behalf any remaining Personal Data as your Service Provider considers necessary to fulfill its obligations under this Statement of Limited Warranty (which may include shipping the Machine for such processing to other service locations around the world), and (c) ensure that such processing complies with any laws applicable to such Personal Data.

Limitation of Liability

Lenovo is responsible for loss of, or damage to, your Machine only while it is 1) in your Service Provider's possession or 2) in transit in those cases where Lenovo is responsible for the transportation charges.

Neither Lenovo nor your Service Provider are responsible for any of your confidential, proprietary or personal information contained in a Machine which you return for any reason. You should remove all such information from the Machine prior to its return.

Circumstances may arise where, because of a default on Lenovo's part or other liability, you are entitled to recover damages from Lenovo. In each such instance, regardless of the basis on which you are entitled to claim damages from Lenovo (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), except for any liability that cannot be waived or limited by applicable laws, Lenovo is liable for no more than

1. damages for bodily injury (including death) and damage to real property and tangible personal property for which Lenovo is legally liable; and
2. the amount of any other actual direct damages, up to the charges for the Machine that is subject of the claim.

This limit also applies to Lenovo's suppliers, resellers and your Service Provider. It is the maximum for which Lenovo, its suppliers, resellers, and your Service Provider are collectively responsible.

UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER THE FIRST ITEM LISTED ABOVE); 2) LOSS OF, OR DAMAGE TO, DATA; 3) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR 4) LOST PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

Governing Law

Both you and Lenovo consent to the application of the laws of the country in which you acquired the Machine to govern, interpret, and enforce all of your and Lenovo's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Statement of Limited Warranty, without regard to conflict of law principles.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which you acquired the Machine.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BOLIVIA

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of La Paz.

BRAZIL

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the court of Rio de Janeiro, RJ.

CHILE

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Civil Courts of Justice of Santiago.

COLOMBIA

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of the Republic of Colombia.

ECUADOR

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of Quito.

MEXICO

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Federal Courts of Mexico City, Federal District.

PARAGUAY

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of Asuncion.

PERU

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges and Tribunals of the Judicial District of Lima, Cercado.

Limitation of Liability: *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code the limitations and exclusions specified in this section will not apply to damages caused by Lenovo's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

URUGUAY

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the City of Montevideo Court's Jurisdiction.

VENEZUELA

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Courts of the Metropolitan Area Of the City of Caracas.

NORTH AMERICA

How to Obtain Warranty Service: *The following is added to this Section:*

To obtain warranty service from IBM service in Canada or the United States, call 1-800-IBM-SERV (426-7378).

CANADA

Limitation of Liability: *The following replaces item 1 of this section:*

1. damages for bodily injury (including death) or physical harm to real property and tangible personal property caused by Lenovo's negligence; and

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws in the Province of Ontario.

UNITED STATES

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York.

ASIA PACIFIC

AUSTRALIA

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other similar legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability: *The following is added to this section:*

Where Lenovo is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other similar legislation, Lenovo's liability is limited to the repair or replacement of the goods or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State or Territory

CAMBODIA AND LAOS

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York, United States of America.

CAMBODIA, INDONESIA AND LAOS

Arbitration: *The following is added under this heading:*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

HONG KONG S.A.R. OF CHINA AND MACAU S.A.R. OF CHINA

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*
laws of Hong Kong Special Administrative Region of China.

INDIA

Limitation of Liability: *The following replaces items 1 and 2 of this section:*

1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by Lenovo's negligence; and
2. as to any other actual damage arising in any situation involving nonperformance by Lenovo pursuant to, or in any way related to the subject of this Statement of Limited Warranty, the charge paid by you for the individual Machine that is the subject of the claim.

Arbitration: *The following is added under this heading*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

JAPAN

Governing Law: *The following sentence is added to this section:*

Any doubts concerning this Statement of Limited Warranty will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA

Limitation of Liability: *The word "SPECIAL" in item 3 of the fifth paragraph is deleted.*

NEW ZEALAND

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which Lenovo provides, if you require the goods for the purposes of a business as defined in that Act.

Limitation of Liability: *The following is added to this section:*

Where Machines are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA (PRC)

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*
laws of the State of New York, United States of America (except when local law requires otherwise).

PHILIPPINES

Limitation of Liability: *Item 3 in the fifth paragraph is replaced by the following:*

SPECIAL (INCLUDING NOMINAL AND EXEMPLARY DAMAGES), MORAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

Arbitration: The following is added: under this heading

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc.. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

SINGAPORE

Limitation of Liability: *The words "SPECIAL" and "ECONOMIC" in item 3 in the fifth paragraph are deleted.*

EUROPE, MIDDLE EAST, AFRICA (EMEA)

THE FOLLOWING TERMS APPLY TO ALL EMEA COUNTRIES:

The terms of this Statement of Limited Warranty apply to Machines purchased from Lenovo or a Lenovo reseller.

How to Obtain Warranty Service:

Add the following paragraph in **Western Europe** (Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland,

Portugal, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently added to the European Union, as from the date of accession):

The warranty for Machines acquired in Western Europe shall be valid and applicable in all Western Europe countries provided the Machines have been announced and made available in such countries.

If you purchase a Machine in one of the Western European countries, as defined above, you may obtain warranty service for that Machine in any of those countries from a Service Provider, provided the Machine has been announced and made available by Lenovo in the country in which you wish to obtain service.

If you purchased a Personal Computer Machine in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, or Ukraine, you may obtain warranty service for that Machine in any of those countries from a Service Provider, provided the Machine has been announced and made available by Lenovo in the country in which you wish to obtain service..

If you purchase a Machine in a Middle Eastern or African country, you may obtain warranty service for that Machine from a Service Provider within the country of purchase, provided the Machine has been announced and made available by Lenovo in that country.. Warranty service in Africa is available within 50 kilometers of a Service Provider. You are responsible for transportation costs for Machines located outside 50 kilometers of a Service Provider.

Governing Law:

The phrase "the laws of the country in which you acquired the Machine" is replaced by:

1) "the laws of Austria" in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia**; 2) "the laws of France" in **Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna**; 3) "the laws of Finland" in **Estonia, Latvia, and Lithuania**; 4) "the laws of England" in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**; and 5) "the laws of South Africa" in **South Africa, Namibia, Lesotho and Swaziland**.

Jurisdiction: *The following exceptions are added to this section:*

1) **In Austria** the choice of jurisdiction for all disputes arising out of this Statement of Limited Warranty and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **In Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Statement of Limited Warranty or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, all disputes arising out of this Statement of Limited Warranty or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of your registered office and/or commercial site location only are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Statement of Limited Warranty or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Statement of Limited Warranty shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Statement of Limited Warranty shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Statement of Limited Warranty will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the English courts.

Arbitration: *The following is added under this heading:*

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Statement of Limited Warranty or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. Lenovo may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Statement of Limited Warranty will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

EUROPEAN UNION (EU)

THE FOLLOWING TERMS APPLY TO ALL EU COUNTRIES:

The warranty for Machines acquired in EU countries is valid and applicable in all EU countries provided the Machines have been announced and made available in such countries.

How to Obtain Warranty Service: *The following is added to this section:*

To obtain warranty service from IBM service in EU countries, see the telephone listing in Part 3 - Warranty Information.

You may contact IBM service at the following address:

IBM Warranty & Service Quality Dept.

PO Box 30

Spango Valley

Greenock

Scotland PA16 0AH

CONSUMERS

Consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the warranties provided in this Statement of Limited Warranty.

AUSTRIA, DENMARK, FINLAND, GREECE, ITALY, NETHERLANDS, NORWAY, PORTUGAL, SPAIN, SWEDEN AND SWITZERLAND

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. Lenovo's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty or due to any other cause related to this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Lenovo is at fault) or of such cause, for a maximum amount equal to the charges you paid for the Machine.
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Lenovo is legally liable.
2. **UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

FRANCE AND BELGIUM

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. Lenovo's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Lenovo is at fault), for a maximum amount equal to the charges you paid for the Machine that has caused the damages.
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Lenovo is legally liable.
2. **UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

THE FOLLOWING TERMS APPLY TO THE COUNTRY SPECIFIED:

AUSTRIA

The provisions of this Statement of Limited Warranty replace any applicable statutory warranties.

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for a Lenovo Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The limitation period for consumers in action for breach of warranty is the statutory period as a minimum. In case your Service Provider is unable to repair a Lenovo Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What Lenovo Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, Lenovo will reimburse you for the transportation charges for the delivery of the failing Machine to IBM Service.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by Lenovo with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

Lenovo's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

EGYPT

Limitation of Liability: *The following replaces item 2 in this section:*

as to any other actual direct damages, Lenovo's liability will be limited to the total amount you paid for the Machine that is the subject of the claim.

Applicability of suppliers, resellers and Service Providers (unchanged).

FRANCE

Limitation of Liability: *The following replaces the second sentence of the first paragraph of this section:*

In such instances, regardless of the basis on which you are entitled to claim damages from Lenovo, Lenovo is liable for no more than: (items 1 and 2 unchanged).

GERMANY

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for a Lenovo Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The minimum warranty period for Machines is twelve months. In case your Service Provider is unable to repair a Lenovo Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What Lenovo Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, transportation for delivery of the failing Machine to Lenovo or IBM service will be at Lenovo's expense.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by Lenovo with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

Lenovo's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

HUNGARY

Limitation of Liability: *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Statement of Limited Warranty balance this limitation of liability.

IRELAND

What this Warranty Covers: *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability: *The following replaces the terms of section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Lenovo in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which Lenovo is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from Lenovo.

This section sets out the extent of Lenovo's liability and your sole remedy.

1. Lenovo will accept unlimited liability for death or personal injury caused by the negligence of Lenovo.
2. Subject always to the **Items for Which Lenovo is Not Liable** below, Lenovo will accept unlimited liability for physical damage to your tangible property resulting from the negligence of Lenovo.
3. Except as provided in items 1 and 2 above, Lenovo's entire liability for actual damages for any one Default will not in any event exceed 125% of the amount you paid for the Machine directly relating to the Default.

Items for Which Lenovo is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is Lenovo, its suppliers, resellers or Service Providers liable for any of the following, even if Lenovo or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

SLOVAKIA

Limitation of Liability: *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

SOUTH AFRICA, NAMIBIA, BOTSWANA, LESOTHO AND SWAZILAND

Limitation of Liability: *The following is added to this section:*

Lenovo's entire liability to you for actual damages arising in all situations involving nonperformance by Lenovo in respect of the subject matter of this Statement of Warranty will be limited to the charge paid by you for the individual Machine that is the subject of your claim from Lenovo.

UNITED KINGDOM

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Lenovo in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which Lenovo is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from Lenovo.

This section sets out the extent of Lenovo's liability and your sole remedy.

1. Lenovo will accept unlimited liability for:

- a) death or personal injury caused by the negligence of Lenovo; and
 - b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section.
2. Lenovo will accept unlimited liability, subject always to the **Items for Which Lenovo is Not Liable** below, for physical damage to your tangible property resulting from the negligence of Lenovo.
3. Lenovo's entire liability for actual damages for any one Default will not in any event, except as provided in items 1 and 2 above, exceed 125% of the total purchase price payable or the charges for the Machine directly relating to the Default.
- These limits also apply to Lenovo's suppliers, resellers and Service Providers. They state the maximum for which Lenovo and such suppliers, resellers and Service Providers are collectively responsible.

Items for Which Lenovo is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is Lenovo or any of its suppliers, resellers or Service Providers liable for any of the following, even if Lenovo or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

Part 3 - Warranty Information

This Part 3 provides information regarding the warranty applicable to your Machine, including the warranty period and type of warranty service Lenovo provides.

Warranty Period

The warranty period may vary by country or region and is specified in the table below. NOTE: "Region" means either Hong Kong or Macau Special Administrative Region of China.

A warranty period of 3 years on parts and 1 year on labor means that Lenovo provides warranty service without charge for:

- a. parts and labor during the first year of the warranty period; and
- b. parts only, on an exchange basis, in the second and third years of the warranty period. Your Service Provider will charge you for any labor provided in performance of the repair or replacement(s) in the second and third year of warranty period.

Machine type XXXX

Country or Region of Purchase	Warranty Period	Type of Warranty Service

Types of Warranty Service

If required, your Service Provider will provide repair or exchange service depending on the type of warranty service specified for your Machine in the above table and as described below. Scheduling of service will depend upon the time of your call and is subject to parts availability. Service levels are response time objectives and are not guaranteed. The specified level of warranty service may not be available in all worldwide locations, additional charges may apply outside your Service Provider's normal service area, contact your local Service Provider representative or your reseller for country and location specific information.

1. Customer Replaceable Unit ("CRU") Service

Lenovo will ship CRUs to you for you to install, Tier 1 CRUs are easy to install whereas Tier 2 CRUs require some technical skill and tools. CRU information and replacement instructions are shipped with your Machine and are available from Lenovo at any time on your request. You may request that a Service Provider install CRUs, at no additional charge, under the type of warranty service designated for your Machine. Lenovo specifies in the materials shipped with a replacement CRU whether a defective CRU must be returned. When return is required, 1) return instructions and a container are shipped with the replacement CRU, and 2) you may be charged for the replacement CRU if Lenovo does not receive the defective CRU within 30 days of your receipt of the replacement.

2. On-site Service

Your Service Provider will either repair or exchange the failing Machine at your location and verify its operation. You must provide suitable working area to allow disassembly and reassembly of the Lenovo Machine. The area must be clean, well lit and suitable for the purpose. For some Machines, certain repairs may require sending the Machine to a designated service center.

3. Courier or Depot Service*

You will disconnect the failing Machine for collection arranged by your Service Provider. A shipping container will be provided to you for you to return your Machine to a designated service center. A courier will pick up your Machine and deliver it to the designated service center. Following its repair or exchange, the service center will arrange the return delivery of the Machine to your location. You are responsible for its installation and verification.

4. Customer Carry-In or Mail-In Service

You will deliver or mail as your Service Provider specifies (prepaid unless specified otherwise) the failing Machine suitably packaged to a designated location. After the Machine has been repaired or exchanged, it will be made available for your collection or, for Mail-in Service, the Machine will be returned to you at Lenovo's expense, unless your Service Provider specifies otherwise. You are responsible for the subsequent installation and verification of the Machine.

5. CRU and On-site Service

This type of Warranty Service is a combination of Type 1 and Type 2 (see above)

6. CRU and Courier or Depot Service

This type of Warranty Service is a combination of Type 1 and Type 3 (see above)

7. CRU and Customer Carry-In or Mail-In Service

This type of Warranty Service is a combination of Type 1 and Type 4 (see above)

When a 5, 6 or 7 type of warranty service is listed, your Service Provider will determine which type of warranty service is appropriate for the repair.

* This type of service is called ThinkPad EasyServ or EasyServ in some countries.

To obtain warranty service contact a Service Provider. In Canada or the United States, call 1-800-IBM-SERV (426-7378). In other countries, see the telephone numbers below.

Worldwide Telephone List

Phone numbers are subject to change without notice. For the warranty service contact telephone number in a country subsequently added to the EU, or any other country, and not yet reflected in the list below, contact Lenovo, IBM service or your reseller in that country..

Country or Region	Telephone Number	Country or Region	Telephone Number
Africa	Africa:	Latvia	+386-61-1796-699
	+44 (0)1475 555 055		
	South Africa:		
	+27 11 3028888 and		
	0800110756		
	Central Africa: Contact		
	the nearest IBM		
	Business Partner		
Argentina	0800-666-0011	Lithuania	+386-61-1796-699
Australia	131-426	Luxembourg	+352-298-977-5063
Austria	+43-1-24592-5901	Malaysia	1800-88-8558
Belgium	Dutch: 02-210 9820	Malta	+356-23-4175
	French: 02-210 9800		
Bolivia	0800-0189	Mexico	001-866-434-2080
Brazil	55-11-3889-8986	Middle East	+44 (0)1475-555-055
Canada	English: 1-800-565-3344	Netherlands	+31-20-514-5770
	French: 1-800-565-3344		
	In Toronto only call:		
	416-383-3344		
Chile	800-224-488	New Zealand	0800-446-149
China (PRC)	800-810-1818	Nicaragua	255-6658
China	Home PC:	Norway	NetVista and
(Hong Kong	852 2825 7799		ThinkCentre:
S.A.R.)			+47 6699 8960
	Commercial PC:		All products:
	852 8205 0333		+47 815 21550
Columbia	1-800-912-3021	Panama	206-6047
Costa Rica	284-3911	Peru	0-800-50-866
Cyprus	+357-22-841100	Philippines	1800-1888-1426
Czech Republic	+420-2-7213-1316	Poland	+48-22-878-6999
Denmark	4520-8200	Portugal	+351-21-892-7147
Dominican	566-4755	Russia Federation	+7-095-940-2000
Republic			

	566-5161 ext. 8201		
	Toll Free within the		
	Dominican Republic:		
	1-200-1929		
Ecuador	1-800-426911	Singapore	1800-3172-888
El Salvador	250-5696	Slovakia	+421-2-4954-1217
Estonia	+386-61-1796-699	Slovenia	+386-1-5830-050
Finland	+358-9-459-6960	Spain	+34-91-714-7983
France	+33-238-557-450	Sri Lanka	+94-11-2448-442
			+94-11-2421-066
			+94-11-2493-500
Germany	+49-7032-15-49201	Sweden	+46-8-477-4420
Greece	+30-210-680-1700	Switzerland	+41-58-333-0971
Guatemala	335-8490	Taiwan	886-2-8723-9799
Honduras	Tegucigalpa & San	Thailand	1-800-299-229
	Pedro Sula: 232-4222		
	San Pedro Sula:		
	552-2234		
Hungary	+36-1-382-5720	Turkey	00800-211-4032
			+90-212-317-1760
India	1600-44-6666	United Kingdom	+44-1475-555-055
Indonesia	800-140-3555	United States	1-800-IBM-SERV
			(1-800-426-7378)
Ireland	+353-(0)1-815-9200	Uruguay	000-411-005-6649
Italy	+39-02-7031-6101	Venezuela	0-800-100-2011
Japan	Toll free: 0120-887-870;	Vietnam	Ho Chi Minh:
	For International:		(848) 824-1474
	+81-46-266-4724		
			Hanoi:
Korea	1588-5801		(844) 842-6316

NUTANIX

License and Services Agreement

This Nutanix License and Services Agreement ("Agreement") governs Your receipt and use of any Products (as defined below) and becomes effective when you (a) issue a purchase order for the Products; (b) accept this Agreement, including by signature, clickthrough, or other acceptance mechanisms; or (c) access, download, install, or use the Software or Cloud Services. This Agreement is entered into between Nutanix Inc., located at 1740 Technology Dr. Ste. 150, San Jose, CA 95110, United States, if You are contracting in the Americas, or Nutanix Netherlands B.V., located at Mercuriusplein 1, 2132 HA Hoofddorp, The Netherlands, if You are contracting anywhere else in the world, or both if you are contracting globally ("Us", "We" or "Our") and your organization ("You" or "Your"). You represent and warrant that you have the authority to enter into this Agreement on behalf of Your organization.

1. Definitions.

- 1.1. **"Affiliates"** means any corporation or other business entity which controls, is controlled by or is under common control with You through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interest of a non-corporate entity. If You are a public sector entity, an Affiliate is an organization over which You exercise administrative control by applicable laws, regulations or governmental decree.
- 1.2. **"Certified Hardware"** means computer equipment that has been approved and certified by Us as interoperable with Our Software or Cloud Services. A list of that hardware can be found at <https://www.nutanix.com/products/hardware-platforms>. Other hardware may be submitted for general or limited certification.
- 1.3. **"Cloud Services"** means Our internet-based or hosted offerings.
- 1.4. **"Documentation"** means the information provided by Nutanix about Our Products found in the documentation section of the Portal (<https://portal.nutanix.com/page/documents/list?type=software>).
- 1.5. **"Delivery"** means the date on which We make the license key for the applicable Software available to You or when We make the Software or Cloud Services otherwise available to You for use.
- 1.6. **"Entitlement"** means Our statement of the SKUs, types, quantities or other metrics for Our Products provided to You. We will supply You with a copy of each Entitlement and make it available in the Portal.
- 1.7. **"Error"** means any reproducible failure of the Software or Cloud Services to substantially perform any material function as set forth in the Documentation.
- 1.8. **"FlexCredits"** means the pre-paid credits which can be redeemed against Professional Services.
- 1.9. **"Partner"** means any entity that is authorized by Us to distribute, resell, act as a Service Provider or otherwise provide Our Products to You.
- 1.10. **"Portal"** means Our website for the receipt by You of Support Services, management of Entitlements, download of Software etc. which can be found at <https://portal.nutanix.com>.
- 1.11. **"Previews"** means Products provided for preview, evaluation, demonstration or trial purposes, or early access (e.g. alpha, beta, pre-release) versions of the Products. Previews also include Products that are provided free of charge ("No-Charge Products").
- 1.12. **"Products"** means Our Software, Cloud Services, Support Services, Professional Services and applicable Documentation.
- 1.13. **"Professional Services"** means consulting, implementation, optimization, training, certification or other services related to the Software and Cloud Services.
- 1.14. **"Service Levels"** means the availability and uptime warranties applicable to the Cloud Services which can be found at <https://www.nutanix.com/support-services/product-support/policies> subject to planned downtime and any unscheduled emergency maintenance.
- 1.15. **"Service Provider"** means a Nutanix Partner who has entered into a valid agreement with Nutanix to act as a provider of a service which employs the Software or Cloud Services.
- 1.16. **"Software"** means the Nutanix-branded computer programs specified in the Entitlement, Updates and Upgrades provided as part of Support Services, and APIs, libraries, utilities, tools, add-ons, license keys and other executables related to the Software or Cloud Services.
- 1.17. **"SOW"** means a document issued by Us that describes the Professional Services.
- 1.18. **"Subscription Term"** means the duration of Your subscription to the applicable Software, Support Services and/or Cloud Services as specified in the Entitlement.
- 1.19. **"Support Guide"** means the Nutanix Worldwide Support Program Guide which can be found at <https://www.nutanix.com/content/dam/nutanix/resources/support/nutanix-support-guide.pdf>.
- 1.20. **"Support Policies"** means Our Software End of Life (EOL) Policy, Our Versioning & Compatibility Matrix, Our Extended Support Policy, Our Third Party Hardware and Software Policy and Our Return Material Authorization Policy, which can be found at <https://www.nutanix.com/support-services/product-support/policies>.
- 1.21. **"Support Services"** means Our Software support and maintenance offerings described in the Support Guide.
- 1.22. **"Update"** means either a Minor Release, Maintenance Release or Patch Release as defined in the Support Guide.
- 1.23. **"Upgrade"** means a Major Release as defined in the Support Guide.
- 1.24. **"Usage Capacity"** means the maximum permitted usage of the i) Software based on certain licensing metrics such as the number of raw CPU cores, raw total flash drive capacity in terabytes, cores managed, used terabytes, named users or concurrent users, VMs or VM packs, per node or configured node, percentage of cloud spend, vCPU of each managed database server, per cluster or per vCPU, GB RAM and DR characteristic, per edge instance, or any other applicable licensing metrics; or ii) Cloud Services based on certain metrics, as specified in the Entitlement and described in the applicable Documentation.
- 1.25. **"Your Content"** means any data, software, applications, content, platforms and services that You introduce into the Products.

2. Software.

- 2.1. **License Grant.** We grant You a limited, non-exclusive, non-transferable, worldwide license to download, install and use the Software (in object code form only) and its Documentation for Your internal business purposes only. The Software is licensed either: (a) independently of hardware nodes, portable between hardware nodes and for a fixed Subscription Term (a "Term Based License"); or (b) for use solely on the hardware node on which it was initially installed and supplied for the life of that hardware node (a "Life of Device License"), or as may be otherwise indicated in Your Entitlement. Subject to Section 13 "Term and Termination", the licenses for the Software and its Documentation expire when the: (a) Subscription Term ends in the case of Term Based Licenses; or (b) original hardware node is decommissioned in the case of Life of Device Licenses. Both Term Based Licenses and Life of Device Licenses are subject to the Usage Capacity.
- 2.2. **License Restrictions.** You agree not to: (a) exceed the Usage Capacity or otherwise use the Software or its Documentation in breach of the Entitlement or this Agreement; (b) transfer, resell, rent, lease, distribute, sublicense or otherwise use Software or its Documentation in a service bureau, commercial hosting service or any similar capacity unless: (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement; (c) disclose the results of any Software benchmark tests or competitive analysis; (d) decompile, disassemble or reverse-engineer any Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software, except to the extent expressly permitted by applicable law; (e) install or use the Software on (i) any hardware other than Certified Hardware and Nutanix authorized public cloud-based service offerings; or (ii) grey-market hardware or components; (f) transfer or use any Life of Device Licenses on the hardware node other than that on which it was initially installed and supplied; (g) modify, adapt or create a derivative work of the Software or Documentation; (h) remove, conceal or alter any product identification, copyright or other proprietary notices in the Software or Documentation; (i) assist or encourage any third party to do any of the foregoing or; (j) use the Products after the expiration of a Subscription Term.
- 2.3. **License Conversion.** Subject to placing a valid purchase order for the same with a Partner, You may convert legacy Life of Device Licenses into Term Based Licenses, in which case, We will alter Your Entitlement to reflect the different usage model.
- 2.4. **Previews License Grant.** Subject to Your compliance with this Agreement, and the licenses granted hereunder, We grant You a license to Previews, for the purposes of evaluation, or as applicable, to Previews specifically identified as alpha, beta, pre-release, demonstration or preview and its Documentation for Your internal business purposes within the Usage Capacity or other licensing metrics as applicable. Previews may only be used in non-production environments and not for commercial purposes or the processing of any production data. Non-public information provided by Nutanix in connection with Previews may not be disclosed to third parties without prior Nutanix authorization. Notwithstanding the foregoing within this section 2.4, and subject to Your compliance with the rest of this Agreement, We grant You a non-exclusive, non-transferable, non-sublicensable, terminable (in accordance with Section 13 herein) license to Use the No-Charge Products solely for internal purposes on Licensee's own premises. Previews are likely to be under development, and might not ever be generally released.

3. Support Services.

- 3.1. **General.** Depending on the Software or Cloud Services license type You purchase, Support Services are either included in the subscription or available separately for a fee. We will provide to You the level of Support Services specified in the Entitlement. Unless otherwise specified in writing, the Support Services will be provided in the English language.

- 3.2. **Scope of Support Services.** Under a valid Support Services Entitlement, We shall: (a) provide You with access to the Portal; (b) provide telephone and web-based Support 24x7 in accordance with the Support Guide and the Support Policies; (c) respond to reported issues within the applicable timeframes in accordance with the mutually agreed priority level ascribed to the Error; (d) address Errors in the form of Updates or Upgrades, workarounds, procedural solutions, correction of Documentation errors, or other remedial measures as We may reasonably determine to be appropriate; and (e) provide You with access to the current versions of released Software, including bug fixes, patches and any generally available Updates and Upgrades.
- 3.3. **Out of Scope Support Services.** Support Services exclude: (a) Software installation; (b) education, training, consulting and Professional Services; (c) support services relating to integrations with third-party products, modifications or customizations; and (d) Software or Cloud Services that are end-of-life and no longer supported as outlined in Our Support Policies.
- 3.4. **Exclusions.** We shall have no obligation to provide Support Services for: (a) Software or Cloud Services that are not registered and validly licensed; (b) any Errors which are attributable to third party products or modifications, alterations or repairs to the Software made by a party other than Us or a party authorized by Us; (c) any Errors which are attributable to the installation, operation or maintenance of the Software or Cloud Services on hardware other than Certified Hardware or otherwise not in accordance with the Documentation; or (d) for Software which is installed on hardware which is not currently covered under a valid support contract or if such hardware has grey market or second-hand parts installed. We do not guarantee that Software will be compatible with the hardware You purchased except for Certified Hardware in accordance with Our Support Policies.
- 3.5. **Your Responsibilities.** It is Your responsibility to: (a) register an account with Us at Our Portal, to keep Your account profile up to date and to designate, in accordance with the Support Guide, a number of authorized persons who have completed the Nutanix NP certification class ("Technical Personnel") which will be the preferred contacts for the receipt of Support Services from Us; (b) provide Us with access to Your systems, network and personnel and make available to Us data, information and other materials necessary to perform the Support Services; (c) install Updates as reasonably directed by Us, ensure that licenses have been obtained for all Software and adhere to all licensing terms and conditions; (d) cooperate with Us to perform any maintenance activities related to the Cloud Services; (e) swiftly notify Us of any Error; and (f) screen first-line technical inquiries and escalate to Us only issues that Technical Personnel have not been able to resolve.
- 3.6. **Reinstatement of Support.** In the event that You wish to reinstate Support Services for Life of Device Licenses after a lapsed period, following expiration or termination of the original Support Services term, the applicable support fee for reinstated Support Services will be calculated as follows: (i) the pro rata Support Services fees that would have been payable at Nutanix's then applicable annual rate of Support Services for the lapsed Support Services period; and (ii) the Support Services fees for the future period commencing upon the reinstatement of Support Services.
- 3.7. **Support Services for NX Branded Hardware.** If You purchase hardware Support Services for Your NX branded hardware, it will be governed by the Hardware Support Services Appendix attached to this Agreement as Appendix 1, including parts replacement for NX.
4. **Professional Services.**
You have the option to purchase Professional Services which We will deliver in accordance with the terms of this Agreement and as specified in the Entitlement and an SOW. We do not do any custom development work. You shall provide Us with any equipment, software, information, timely decisions, directions and facilities necessary for Us to perform the Professional Services. You grant Us a non-exclusive, worldwide, royalty-free license to use Your intellectual property solely for the purpose of performing the Professional Services. We grant You a license to use any deliverables provided as part of the Professional Services on the terms specified in Section 2 above. Any FlexCredits or prepaid Professional Services must be used within twelve (12) months from the purchase date, after which they will automatically expire and are non-refundable.
5. **Cloud Services.**
 - 5.1. **General.** If You purchase Cloud Services, We will make the Cloud Services available to You during the Subscription Term in accordance with the terms of this Agreement, the applicable Entitlement and Documentation.
 - 5.2. **Service Levels.** The Service Levels will apply to the Cloud Services. If We fail to meet these Service Levels, Your sole and exclusive remedy will be the service credits specified therein.
 - 5.3. **Access Right and Right to Use.** Subject to the terms of this Agreement, We grant You a limited, non-exclusive, non-transferable and revocable right to (a) access and use the Cloud Services and its Documentation for Your internal business purposes only in accordance with this Agreement and the Entitlement for the Usage Capacity and Subscription Term only; and (b) use any applicable Software made available to You in connection with the Cloud Services and in accordance with the Documentation on the terms specified in Section 2 above.
 - 5.4. **Usage Restrictions.** Except as expressly permitted by this Agreement, You will not and have no rights to: (a) use the Cloud Services in excess of the Usage Capacity or otherwise in breach of the Entitlement or this Agreement; (b) use the Cloud Services, the APIs or the Software for service bureau or managed service purposes, or otherwise commercially exploit the Cloud Services unless (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement; (c) publicly communicate, transform, or sublicense the Cloud Services or otherwise assign any rights to the Cloud Services in whole or in part to any third party unless explicitly permitted in the Entitlement; (d) decompile, disassemble or reverse-engineer or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Cloud Services, the APIs or the Software, except to the extent expressly permitted by applicable law; (e) access or use disabled functions; (f) disclose the results of any Cloud Services benchmark tests or competitive analysis; (g) modify, adapt or create a derivative work based on the Cloud Services; (h) use the Cloud Services for any illegal or fraudulent purposes (i) circumvent any security features; (j) use the Cloud Services in any way that poses security threats or otherwise introduces security or performance vulnerabilities into the Cloud Services; or (k) assist or encourage any third party to do any of the foregoing.
 - 5.5. **Security and Protection of Your Content.** If the Cloud Services include the transmission and processing of Your Content by Us, then We will maintain administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Content as specified in the Documentation. You are responsible for using and configuring the Cloud Services in such a manner that it will provide an appropriate level of security and protection from unauthorized access to Your Content.
 - 5.6. **License to use Your Content.** By making Your Content available, You grant Us a worldwide, royalty free, non-exclusive license to use Your Content solely to provide the Cloud Services to You.
 - 5.7. **Your Obligations.** You are solely responsible for ensuring that the use of the Cloud Services and the use of Your Content by its users is in compliance with this Agreement and all applicable laws. You represent and warrant that Your use of Your Content in connection with the Products will not violate any third-party rights or Your obligations to any third party. You are responsible for the lawfulness and accuracy of Your Content processed under or in connection with the Agreement. You represent and warrant that You have provided and will continue to provide all notices and obtain any necessary consents under applicable law for Us to lawfully process Your Content for the purposes contemplated by the Agreement. It is Your sole responsibility to provision and control the credentials of Your employees, agents, contractors and other users of the Products ("User(s)").
 - 5.8. **Transmission of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, including to a third-party platform, then You are responsible for the transmission of and the security of Your Content to and from the Cloud Services.
 - 5.9. **Acceptable Use.** You shall not use the Cloud Services to: (a) transmit or store any content that may pose threats or otherwise engage in any conduct that may disrupt or damage the operation of the Cloud Services or interfere with any third-party; (b) manage specifically regulated data, including, but not limited to data subject to the Health Insurance Portability and Accountability Act, Basel II, Gramm Leach Bliley Act and Payment Card Industry regulations; (c) conduct any abusive, harassing, slanderous, fraudulent, illegal, or defamatory activity; (d) violate any laws or third-party rights, including any intellectual property rights, personal data and privacy rights; or (e) conduct, directly or indirectly, any activities associated with cryptocurrency mining or similar endeavors.
 - 5.10. **Temporary Suspension.** We may temporarily suspend Your rights to access the Cloud Services if You use the Cloud Services outside the scope of this Section 5.
6. **Proprietary Rights.**
 - 6.1. **Our Products.** We and Our licensors own all worldwide right, title and interest in the Products including all related copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights"). The Products are Our valuable trade secrets and constitute Our Confidential Information. Except for the rights explicitly granted to You in this Agreement, all right, title and interest in the Products are reserved and retained by Us, Our Affiliates, and/or Our licensors. You do not acquire any intellectual property or other rights in the Products as a result of downloading, installing, accessing or using the Products except as specified in this Agreement.
 - 6.2. **Your Content.** You or Your licensors shall own all right, title and interest in and to all of Your Content and You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Your Content.
 - 6.3. **Feedback.** If You choose to give Us any ideas, suggestions, enhancement requests, recommendations or any other materials in connection with this Agreement or Our Products (collectively, "Feedback"), You grant Us a royalty-free, fully paid-up, worldwide, transferable, sub-licensable,

irrevocable and perpetual license to implement, use, modify, and/or incorporate the Feedback into Our Products or otherwise commercially exploit such Feedback.

7. Warranties and Disclaimer.

- 7.1. Software Warranty.** We warrant to You that for a period of ninety (90) days from the date of first Delivery of the Software ("Software Warranty Period"), the Software will perform the functions described in the Documentation when used in accordance with that Documentation. The Software is not warranted to be Error free. In the event of a breach of this warranty that is reported to Us during the Software Warranty Period, We shall at Our election either (i) repair or replace the Software so that it conforms to the foregoing warranty or (ii) terminate the license with respect to the non-conforming Software and refund the license fees paid by You for the non-conforming Software. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is inconsistent with the Documentation. If You use the Software in excess of the Usage Capacity or the scope of this Agreement, this warranty becomes void. We warrant that at Delivery, the Software contains no known virus, malware, spyware, trojan horse or other disabling code.
- 7.2. Support Services Warranty.** We warrant to You that for the duration of the Support term, Support Services will be performed with industry standard care and skill and in a professional and workmanlike manner. Should You believe that Support Services have not been performed in accordance with this warranty, You must provide Us with a reasonably detailed written notice within thirty (30) days of occurrence of the nonconformance. We will re-perform any non conforming Support Services.
- 7.3. Professional Services Warranty.** We warrant to You that Professional Services will be provided in a professional and workmanlike manner in accordance with good industry practice. Your sole and exclusive remedy for a breach of this warranty is reperformance of the Professional Services or at Our discretion a refund of the fees paid by You, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services.
- 7.4. Cloud Services Warranty.** We warrant that the Cloud Services will perform substantially in accordance with the Documentation during the Subscription Term. We do not warrant that the Cloud Services will be uninterrupted or Error free. This warranty shall not apply to the extent of any non-conformance which is (i) caused by use of the Cloud Services contrary to the Documentation or Our instructions, or modification or alteration of the Cloud Services by any party other than Us or Our duly authorized contractors or agents; or (ii) due to Your Content. If the Cloud Services do not conform with this warranty, We will, at Our expense, use all reasonable commercial endeavors to correct any such non-conformance promptly. Subject to Section 7.2 above, if a correction of such non-conformance is impossible, then We will terminate the Cloud Services and refund any prepaid subscription fees for the affected Cloud Service covering the remainder of the applicable Subscription Term after the date You notified Us of any non-conformance.
- 7.5. Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE WARRANTIES IN THIS SECTION 7 ARE YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.
- 7.6. Previews Disclaimer.** THE WARRANTIES IN THIS SECTION 7 DO NOT APPLY TO PREVIEWS. PREVIEWS ARE PROVIDED "AS-IS", "WITH ALL FAULTS" AND "AS AVAILABLE". NUTANIX MAY CHANGE OR DISCONTINUE PREVIEWS AT ANY TIME WITHOUT NOTICE. WE DISCLAIM ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

8. Indemnification.

- 8.1. Indemnification by Us.** Subject to the limitations in this Section 8, We will (a) defend and indemnify You against any third-party claim alleging that the Products infringe or misappropriate a third-party intellectual property right; and (b) pay any settlement amount or the damages and losses finally awarded against You by a court of competent jurisdiction as a result of the claim.
- 8.2. Exclusion.** We have no obligation to indemnify You and accept no responsibility or liability for any third party infringement claims arising out of: (a) any use of the Products so that it is no longer infringing without substantially limiting its functionality; (b) any modification of the Products by anyone other than Us, except a third party acting on Our behalf; (c) the combination or use of the Products, as applicable, with any other product, service, software, data, content or method; (d) Your continued use of Products that are no longer supported by Us; or (e) any failure by You to implement Updates or Upgrades provided under Support Services ("Excluded Claims").
- 8.3. Indemnification Claims.** If an infringement claim is made or appears likely to be made, We may, at Our own expense and discretion, do any of the following: (a) modify the Products so that it is no longer infringing without substantially limiting its functionality; (b) obtain a license for You to continue to use the Products; or (c) terminate this Agreement and refund the fees paid for the infringing Products. For Term Based Licenses, associated Support Services or Cloud Services, the refund will be calculated on a straightline amortization basis over the subscription term. For Life of Device Licenses and associated Support Services, the refund will be calculated on a straightline amortization basis over five (5) years. For Professional Services, the refund will be the total fees for those services.
- 8.4. Indemnification by You.** You will defend and indemnify Us against any claim brought against Us by a third party arising out of or relating to any Excluded Claim or Your Content including any third-party claim alleging that any of Your Content infringes or misappropriates that third-party intellectual property or violates Your obligations to any third party and You agree to pay any settlement amount, or the damages and losses finally awarded against Us by a court of competent jurisdiction as a result of the claim.
- 8.5. Process.** Each party's defense and indemnity obligations in this Section 8 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any admission of wrongdoing or acceptance of a material obligation by the other party without the prior written consent of the other party.
- 8.6. Entire liability and remedies.** The remedies in this Section 8 represent Our entire liability and obligation and Your sole and exclusive remedy with respect to third-party intellectual property rights infringement claims related to the Products.

9. Limitation of Liability.

- 9.1. Liability Exclusions.** Regardless of the basis of the claim or theory of liability, neither You nor We will be liable for: (a) any special, indirect, incidental, consequential, or punitive damages, (b) damages arising from the loss of use, loss or corruption of data, lost profits, lost revenue, business interruption or cost of procuring substitute Products, or (c) unavailability of the Cloud Services.
- 9.2. Damages Cap.** Neither Your nor Our aggregate liability shall exceed the greater of five hundred thousand United States dollars (US\$ 500,000) or the amount received by Us for the applicable Products in the twelve (12) months prior to the event giving rise to this liability.
- 9.3. Exceptions.** Sections 9.1 and 9.2 do not apply to usage in excess of an Entitlement, a breach of Our intellectual property rights or restrictions on the use of Our Products as detailed in this Agreement, an indemnification claim under Section 8, in case of gross negligence, willful misconduct, fraud, personal injury, or to any liability pursuant to any applicable legislation that does not permit a party to limit or exclude any liability.

10. Confidential Information.

- 10.1. Confidential Information.** Confidential Information means any non-public information disclosed by one party to the other party in connection with this Agreement and any information that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure or would be deemed to be confidential or proprietary to a reasonable recipient. Confidential Information includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party ("Recipient"); (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party ("Discloser"); (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party without reference to Confidential Information. Subject to applicable law, Confidential Information includes, but is not limited to, this Agreement, Our Products, trade secrets, know-how, product roadmap, source code, software, product and technology-related information, customer lists, financial information, sales, pricing information, marketing and business plans.
- 10.2. Treatment.** Confidential Information shall remain the property of the Discloser. Each party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure, except confidentiality obligations will continue indefinitely regarding Confidential Information considered as trade secrets under applicable law to the extent such Confidential Information remains a trade secret; and (b) to disclose the other party's Confidential Information only to those employees or agents or the Affiliates' employees or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. Recipient shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. Recipient may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, Recipient gives Discloser prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

- 10.3. Return or Destruction.** Upon termination of this Agreement or Discloser's written request, all Confidential Information (including all copies thereof) of Discloser shall be returned or destroyed and provide written certification of this destruction, unless Recipient is required to retain such information by law, and the receiving party shall certify its compliance with this Section 10.3.
- 10.4. Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 10, without the necessity of posting any security. Recipient will notify Discloser in writing upon the receiving party becoming aware of any unauthorized use or disclosure of Confidential Information.
- 11. Data Processing.**
- 11.1. Usage Data.** Notwithstanding anything to the contrary in the Agreement (including the DPA, where applicable), Nutanix collects and uses data pertaining to the use of the Products, support and/or operation of the Products ("Usage Data"), for Our legitimate business purposes, such as billing, account management, security and support. We may also collect and use Usage Data to develop and improve Our Products, and to sell and market Our Products to You. You may opt out of such collection in your Product settings, except for those Products that require the collection of Usage Data to operate in accordance with Our Documentation.
- 11.2. Data Privacy.** We will process any personal data provided to Us in accordance with Applicable Privacy Law (as defined in the Data Processing Addendum <https://www.nutanix.com/legal/data-processing-addendum> ("DPA")) and our data privacy statement which can be found at <https://www.nutanix.com/legal/privacy-statement>.
- 12. Compliance.**
- 12.1. Compliance with Documentation.** You agree that You will comply with all instructions and requirements in any Product specification sheets, user guides, security best practices and policies, and other documentation that We provide or make available to You in connection with the use of the Products.
- 12.2. Compliance with Laws; Anti-Corruption.** We and You shall comply with all applicable laws and regulations including but not limited to those relating to anti-corruption or anti-bribery e.g. the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 12.3. Export Control.** The Products are subject to export restriction in the U.S. and other jurisdictions. You shall fully comply with all applicable export laws and regulations that apply to the download, installation and use of the Products in Your jurisdiction. You represent and warrant that You are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.
- 12.4. US Government Restrictions.** You acknowledge that the Products were developed entirely at private expense and no part of the Products were first produced in the context of a government contract. The Products are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Products. If You are using the Products on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, You will immediately discontinue Your use of the Products. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 13. Term and Termination.**
- 13.1. Term.** This Agreement will remain effective until terminated in accordance with this Section 13.
- 13.2. Subscription Renewal.** Your subscription for the Software, Support Services and Cloud Services will automatically renew for a term equal to the previous Subscription Term, or such other term agreed by the parties in writing. You may cancel the automatic renewal by providing Us with ninety (90) days written notice prior to the end of Your Subscription Term. Unless You have provided notice of cancellation, You agree to raise a valid purchase order prior to the commencement of the renewal Subscription Term and We or Our Partner will be entitled to invoice You for the applicable fees. If you fail to renew Your subscription for the Software, Support Services and Cloud Services in a timely manner, backdated fees will be due for the continued use of the same, calculated from the end of preceding Subscription Term in addition to any fees due for future periods.
- 13.3. Termination.** Either party has the right to suspend or terminate this Agreement upon written notice to the other party if the other party: (a) is in default of any material obligation and the default has not been cured within thirty (30) days of receipt of written notice specifying the default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law domestic or foreign, or has been liquidated.
- 13.4. Effect of Termination or Expiration of Entitlement.** Upon any termination of this Agreement or the expiration of any Entitlement issued hereunder, the rights and licenses granted to You will automatically terminate, and You agree to immediately cease using the Products, return or destroy all copies of the Products, Documentation and other Confidential Information in Your possession and certify to Us in writing completion of the return or destruction. Upon termination, except as otherwise set forth herein, We will have no obligation to refund any fees or other amount received from You during the Term and You shall be required to pay immediately all outstanding amounts. All Product fees and fees paid or owed or expenses incurred as of the date of termination are non-cancellable, non-contingent and non-refundable.
- 13.5. Return of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, then You may retrieve and remove Your Content in accordance with the Documentation. We shall have no obligation to provide access to Your Content thirty (30) days following the Subscription Term or termination date.
- 13.6. Previews Term and Expiration.** Unless otherwise specified in the Entitlement, Previews, except for No-Charge Products, may be used for a period not exceeding thirty (30) days from Delivery or access being granted ("Evaluation Period"). You agree to uninstall, delete and cease using such Previews at the end of the Evaluation Period. No-Charge Products may be used in accordance with this Section 13.
- 14. Authorized Partners.**
The terms of the agreement between You and a Partner for the procurement of the Products applies solely between You and that Partner.
- 15. Governing Law and Jurisdiction.**
- 15.1. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws and under the exclusive jurisdiction of the competent courts as follows:

You are domiciled in	Nutanix contracting entity	Governing law	Courts with exclusive jurisdiction
The Americas	Nutanix Inc.	State of California and controlling United States law	Federal or state courts located in San Francisco
U.S. Federal Government	Nutanix, Inc.	Federal Law	US District Court or the US Court of Federal Claims
France	Nutanix Netherlands B.V.	French law	Paris
Germany	Nutanix Netherlands B.V.	German law	Munich
United Kingdom	Nutanix Netherlands B.V.	English law	England and Wales
Australia, New Zealand, Hong Kong, Korea and Taiwan	Nutanix Netherlands B.V.	State of New South Wales	Sydney
Japan	Nutanix Netherlands B.V.	Japan	District Court of Tokyo
Malaysia, Philippines, Singapore and Thailand	Nutanix Netherlands B.V.	Singapore	Singapore
China	Nutanix Netherlands B.V.	China	CIETAC Beijing
Any other country	Nutanix Netherlands B.V.	The Netherlands	Amsterdam

15.2 Exclusion. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

16. Certification and Audit.

You agree to maintain accurate records as necessary to verify Your compliance with this Agreement. Upon Our request, no more than once every twelve (12) months, You agree to furnish Us with a written certification signed by one Your authorized representatives verifying that the Products are being used in accordance with this Agreement and the Entitlement. We or Our independent third-party accountant may examine and audit Your books and records relating to this Agreement and Your access, use, and deployment of the Products to the extent necessary to verify Your compliance with this Agreement and the Entitlement. Any audit will be conducted during regular business hours at Your facilities, will not unreasonably interfere with Your business and will comply with Your reasonable security procedures. If an audit reveals that You have exceeded the Usage Capacity, Usage Limits, other licensing metrics or the scope of Your license granted during the period audited, additional fees for Your excess usage are payable net thirty (30) days.

17. General.

- 17.1. **Affiliates and Contractors.** You may permit Your Affiliates and/or any contractor acting on Your behalf to use the Products within the Usage Capacity as specified in the Entitlement provided that they comply with the terms of this Agreement. You will be jointly and severally liable for any breach of this Agreement by any of the foregoing users.
- 17.2. **Assignment.** You may not assign this Agreement or any rights that We have given You under it unless We provide written consent, which We shall not unreasonably withhold. Either party can assign this Agreement to a successor in interest in the context of a change of control. Any purported assignment in violation of this section shall be null and void.
- 17.3. **Third-Party and Open Source Software.** The Products may contain components of copyrighted third-party software or open source software. Third party and open source software that is delivered as part of the Software is included in the warranty, support and indemnification provisions applicable to the Software provided it is not removed or used separately from the Software. Your internal use of open source software included in the Products without modification and in compliance with this Agreement will not result in the imposition of "copyleft" obligations with respect to Your intellectual property.
- 17.4. **No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or party other than the parties to this Agreement except as set forth in Section 1.3., 2, 3, and 9.
- 17.5. **Relationship of the Parties.** We perform Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of You, and neither You or We have the authority to bind the other by contract or otherwise.
- 17.6. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- 17.7. **Subcontractors.** We may use subcontractors, but We shall remain liable to You for all of Our obligations under this Agreement.
- 17.8. **Force Majeure.** We will not be liable for performance delays during the performance of Support Services or Professional Services or for nonperformance, due to causes beyond Our reasonable control.
- 17.9. **Severability.** If any provision in this Agreement is found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect.
- 17.10. **Notices.** Our notice address is: Nutanix, Inc., 1740 Technology Drive, Suite 150, San Jose, CA 95110, Attn: Chief Legal Officer.
- 17.11. **Survival.** Sections 2.2, 5.4, 6, 8, 9, 10, 12, 15, 16 and 17.9 shall survive the expiration or termination of this Agreement.
- 17.12. **Entire Agreement.** This Agreement, together with any additional terms incorporated by reference, including the Entitlement and the Appendices hereto, constitute the complete and exclusive understanding and agreement between You and Us and supersedes any written or oral prior or contemporaneous agreements, communications and understandings.
- 17.13. **Modifications.** This Agreement cannot be modified except by mutual written agreement or as required by law. Any other terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement are void and will have no effect unless otherwise expressly agreed to by You and Us.

Appendix 1: Hardware Support for NX Branded Hardware

1. **Scope of Hardware Support Services.** We will only provide Hardware Support Services for NX branded hardware ("Hardware") under a valid Entitlement. If We determine that replacement parts are required for Hardware Support Services, then We will replace any failed part with a functional equivalent that will have equal or higher specifications. Replacement parts may be new or refurbished, at Our option. All defective parts must be returned following Nutanix's return material authorization policy ("RMA Policy") which can be found at <https://www.nutanix.com/support-services/product-support/policies> and <https://www.nutanix.com/legal/privacy-statement/data-privacy-policy>. If You have purchased a Nutanix non-return media option, all defective parts except the relevant media must be returned following the Nutanix RMA Policy. If You do not follow Nutanix's RMA Policy, Nutanix may invoice You (directly or through Our Partners) for the full cost of the replacement part(s). All returned parts become the property of Nutanix.
2. **Reinstatement of Support.** The terms and conditions in Section 3.6 of the Agreement ("Reinstatement of Support") apply to reinstatement of Hardware Support.
3. **Exclusions.** We shall have no obligation to provide Support Services for Hardware (a) that has been mishandled, altered or damaged due to willful or negligent acts or omissions or force majeure, or operation of the Hardware other than as specified in the documentation accompanying the Hardware; (b) modified, altered or repaired by a party other than Us or a party authorized by Us; (c) that was subjected to fire suppression discharge or a power failure; (d) that was subjected to abnormal physical or electrical stress, abnormal environmental conditions or environmental and storage conditions (including temperature and/or humidity ranges) which are not in accordance with the documentation accompanying the Hardware; or (e) that has installed Software which is subject to Nutanix's Software End of Life Policies which can be found at <https://www.nutanix.com/support-services/product-support/policies>.

Appendix 2: Direct Purchase Terms

The following terms apply only if You purchase Products directly from Us.

1. Definitions

- 1.1. "Delivery" means the date when We make the license key for the applicable Software available to You or when We make the Software otherwise available to You or when We render the Professional, Support and Cloud Services.
- 1.2. "FlexCredits" means the pre-paid credits which can be redeemed against Professional Services.
- 1.3. "Price List" means Our then-current list of Products and their associated prices as amended from time to time.
- 1.4. "Purchase Orders" means the electronic or written order issued by You directly to Nutanix consistent with the corresponding price quotation for the purchase of the Products.

2. Orders & Acceptance

- 2.1. Purchase Orders. You shall issue binding, non-contingent, written or electronic Purchase Orders consistent with the corresponding price quote for the purchase of the Products. Your Purchase Orders shall refer exclusively to these Terms and the NLSA or any version thereof negotiated between You and Us.
- 2.2. Acceptance. Acceptance by You of the Software occurs upon Delivery. Acceptance of Professional, Support and Cloud Services occurs when such services are rendered unless otherwise agreed between You and Us in a separate document.

3. Pricing & Payments

- 3.1. Pricing. We may change in Our sole discretion the prices specified in Our price list and add or remove items at any time. A Purchase Order received after the effective date of a price change, but pursuant to a valid and unexpired quote shall be invoiced at the price stated on that quote.
- 3.2. Payment Terms. You shall make full payment in the currency specified in the invoice not later than thirty (30) days from the date of Our invoice. The rights to use the Software and Documentation, access the Cloud Services, receive the Support Services and Professional Services are subject to payment in accordance with this Section 3.2. All fees are non-refundable, non-contingent and non-cancellable.
- 3.3. Credit Cards. Cloud Services may also be purchased via a credit card through the Nutanix billing center available in the MyNutanix portal which may be found at <https://my.nutanix.com>.

4. FlexCredits

You may use FlexCredits, as specified below, to purchase Professional Services. FlexCredits, identified by SKU FLEX-CST-CR on Our price list, or such other SKU as We may determine from time to time, may only be used for packaged or custom Professional Services, technical account manager or resident consultant resources, education offerings, including certifications or any additional services as We may determine at Our discretion. Additional information on Professional Services against which FlexCredits may be utilized is available at: <https://www.nutanix.com/support-services/consulting-services> for consulting services and for education and certification. The cost of FlexCredits is as per the then current price list. FlexCredits expire twelve (12) months from the purchase date, are non-refundable and can be applied to any Professional Services made available by Us at the time of redemption. Balances can be pooled toward a single redemption and FlexCredits may be purchased upfront. You don't have to select in advance the Professional Services against which FlexCredits are to be redeemed.

5. Taxes & Duties

You are solely responsible for the payment of taxes, fees, withholding, duties and charges and all related penalties and interest that arise from utilization of or provision of the Software, Cloud Services, Support Services and Professional Services including any taxes that arise on the provision of products to Your Affiliates. Taxes include, without limitation, VAT, Service tax, GST, excise taxes, sales and transaction taxes or any other like taxes that are owed with respect to any order placed under this agreement. If You are tax-exempt, provide us with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the date you give us an Order. If You don't, We may include such taxes in the invoice and you are obligated to pay them. All payments pursuant to this Agreement shall be made without any withholding or deduction of any withholding tax or other tax or mandatory payment to government agencies. If you are legally required to make any such withholding or deduction from any payment due to us under this Agreement, the sum payable by you upon which such withholding or deduction is based shall be increased to the extent necessary to ensure that, after such withholding or deduction, We receive and retain, free from liability for such withholding or deduction, a net amount equal to the amount We would have received and retained in the absence of such required withholding or deduction. A valid Tax registration number is required for all Non-US orders.

6. Conflicting Terms.

The above terms prevail over any conflicting or additional terms referred to in any Purchase Order, quote or similar communication between You and Us. Purchase Orders issued by You shall be deemed to incorporate these Terms except where You and Us have expressly agreed in writing to variations thereto.

RUBRIK

Hardware Support Policy and Manufacturer Warranty
End User License Agreement



RUBRIK, INC. HARDWARE SUPPORT POLICY AND MANUFACTURER WARRANTY

This Rubrik Hardware Support Policy (“**Policy**”) and Manufacturer Warranty contains the applicable terms and conditions of the Manufacturer Warranty and Support Services (defined below) under an active post-sale Support Services Plan, and forms part of the agreement between Rubrik and Customer governing Customer’s use of the Rubrik Service or Software and Hardware (“**Agreement**”). All capitalized terms not defined herein are as defined in the Agreement.

1. DEFINITIONS.

- 1.1. “**Defect**” means a failure of the Hardware to conform in all material respects to the applicable Documentation.
- 1.2. “**Hardware**” means only hardware which is branded with the Rubrik logo and excludes all other hardware.
- 1.3. “**Remote Support Request**” means a service request Customer may submit to Rubrik via the web, telephone or email.
- 1.4. “**Support Services Effective Date**” means the date that the Support Services was made available to the Customer.
- 1.5. “**Spare(s)**” means a replacement component for any Hardware, which is provided in accordance with Rubrik’s written instructions or return materials authorization procedure (“**RMA Procedures**”) including field replaceable units and replacement parts.
- 1.6. “**Support Services**” means the support services for the Hardware as more fully described in Section 4 below and which are provided by Rubrik or its subcontractor(s) or are available on Rubrik’s support website.
- 1.7. “**Support Services Plan**” means the level of Support Services as more fully described in Section 7 of this Policy for which Customer has paid the applicable Support Services fee(s).

- 2. **SCOPE.** This Policy applies, and Rubrik will provide Support Services and facilitate Customer’s manufacturer warranty claims for Hardware, as described in Section 3 (Manufacturer Warranty), only if Customer has purchased a post-sale Support Services Plan for the Hardware. If Customer has not purchased a post-sale Support Services Plan for the Hardware, Customer will not receive any Support Services described in this Policy from Rubrik and Rubrik will not facilitate any hardware warranty claims and instead Customer must contact the applicable reseller or hardware manufacturer for all support and warranty claims.

3. MANUFACTURER WARRANTY.

- 3.1 The Rubrik brand is licensed by Rubrik to certain third-party hardware manufacturers who manufacture and sell Hardware (“**Manufacturer**”). Rubrik does not own, manufacture, sell, lease, license, supply, indemnify, warrant, or support Hardware. If Customer purchases a post-sale Support Services entitlement from Rubrik (or its authorized reseller) for the Hardware, then Support Services for the Hardware will be provided by Rubrik in accordance with this Policy and Rubrik will facilitate Customer’s warranty claim under the Manufacturer warranty described in this Section 3. If Customer does not purchase a post-sale Support Services entitlement for the Hardware, the following warranty will be provided by Manufacturer rather than Rubrik and Customer must contact its applicable reseller to facilitate any warranty claims.
- 3.2 **Hardware Warranty.** Manufacturer warrants to Customer, for one (1) year from the date of shipment of the Hardware (“**Hardware Warranty Period**”), that the Hardware will conform in all material respects to the applicable Documentation (“**Hardware Warranty**”). The foregoing warranty only applies if Customer has purchased Hardware (and excludes all third-party hardware).
- 3.3 **Remedy.** Manufacturer’s sole obligation under the Hardware Warranty, and Customer’s exclusive remedy, is to use commercially reasonable efforts to repair or replace non-conforming Hardware, provided that Customer promptly notifies Rubrik or Manufacturer of such non-conformance during the applicable Hardware Warranty Period. Prior to returning any Hardware for warranty-related claims, Customer must obtain Rubrik or Manufacturer’s prior written authorization and comply with Manufacturer or Rubrik’s RMA Procedures and instructions. Any Hardware that is repaired or replaced under this Hardware Warranty shall be covered for the remaining unexpired term of the Hardware Warranty Period for the original Hardware, or thirty (30) calendar days after re-delivery, whichever is longer.

- 3.4 **Hardware Warranty Support Services Availability.** During the Hardware Warranty Period, Customer may submit service requests via web, telephone or email 24x7. Rubrik or Manufacturer will use commercially reasonable efforts to respond to Customer's service requests within the response times in the Response Time Targets table in Section 9 of this Policy.
- 3.5 **Terms and Exclusions.** The Hardware Warranty does not apply to any Hardware: (i) returned without Rubrik's or Manufacturer's prior written authorization pursuant to Section 3.3 of this Policy; (ii) handled, transported, installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, the Policy, or Rubrik's or Manufacturer's written instructions or recommendations; (iii) repaired, altered or modified other than by Manufacturer, Rubrik, or its authorized service provider; or (iv) where the Hardware Warranty Period has expired. Additional charges may apply for support provided outside the applicable Hardware Warranty Period or for excluded repairs or error corrections to the extent not otherwise covered under the Hardware Warranty or, if applicable, the Support Services Plan purchased for such Hardware.
- 3.6 Hardware Warranty claims must be made within the Hardware Warranty Period. "Dead on Arrival" Hardware ("**DOA Hardware**") must be reported to Rubrik or Manufacturer within thirty (30) calendar days of delivery of the Hardware. Rubrik or Manufacturer will ship a replacement for DOA Hardware on the same business day pursuant to Section 7.2 of this Policy. Customer will return the DOA Hardware to Rubrik or Manufacturer, as instructed, within fourteen (14) calendar days of receipt of the replacement Hardware or will pay the purchase price for the replacement Hardware and all associated duties, taxes, and shipment costs.
- 3.7 For Hardware Defects that require a Spare or replacement Hardware, return and replacement terms are as set forth in the applicable Support Services Plan.
4. **SUPPORT SERVICES.** Rubrik will provide the Support Services to Customer in accordance with this Policy, provided Customer: (i) is in compliance with the terms of this Policy; (ii) has paid all applicable fees due; (iii) has a current Support Services Plan; and (iv) Customer's use of the Hardware is in conformance with the Documentation. This Policy governs in the event of any conflict with other terms, conditions or agreements relating to its subject matter. This Policy, and the Support Services Plans may change from time to time or certain Support Services may be discontinued; however, such changes will not result in a material reduction in the level of the Support Services provided to Customer during the then-current Support Term. Rubrik will use reasonable efforts to notify Customer of any changes to this Policy at least thirty (30) calendar days prior to the effective date of such change. Customer is deemed to have accepted the changes specified in such notice, unless Customer objects to any material changes in the notice, in which case Customer has ten (10) days to notify Rubrik of Customer's objection. If Customer objects to the changes in the notice, the prior version of this Policy shall apply through expiration of the then-current Support Term. Support Services are provided in English only.
5. **PRODUCT LIFE CYCLE.** This Policy is subject to the Product Life Cycle Policy available at <https://www.rubrik.com/en/legal>.
6. **SUPPORT SERVICES TERMS AND CONDITIONS.**
- 6.1. **Support Term.** The Support Services commence on the Support Services Effective Date and remain in effect for the initial term of Support Services as specified in an applicable Order, including any renewal thereof ("**Support Term**").
- 6.2. **Renewal of Support Services Plan; Reinstatement.** Subject to payment of the applicable fees under a renewal Order, the Support Services Plan shall renew for the period set forth in the Order. If Customer does not renew the Support Services Plan prior to the expiration of the Support Term ("**Lapse**"), Support Services may subsequently be renewed by Customer in Rubrik's sole discretion. If Rubrik permits renewal of the Support Services Plan after a Lapse: (i) the renewal Support Term shall commence on the date of expiration or termination of the prior Support Term; and (ii) Rubrik reserves the right, in its sole discretion, to charge a reinstatement fee to bring the Hardware to a supportable state, as determined by the Service Quality Assurance Check described in Section 6.9 below. For the avoidance of doubt, no Support Services Plan may be purchased if: (i) Customer did not initially purchase a Support Services Plan and more than twelve (12) months have elapsed since the purchase date of the Hardware; or (ii) more than twelve (12) months have elapsed since the prior Support Services Plan expired or was terminated in accordance with Section 6.3 of this Policy.
- 6.3. **Termination.** Rubrik may suspend or terminate a Support Services Plan if the Agreement is terminated in accordance with its terms, or for Customer's material breach of this Policy, including but not limited to non-payment of applicable fees.

- 6.4. **Notification of Defects.** If Customer believes that there is a Defect in the Hardware, Customer will: (i) promptly notify Rubrik, providing sufficient detail for Rubrik to identify the Defect; (ii) upon request, provide Rubrik with remote access, all relevant and necessary data files, software or any other relevant material; and (iii) to the extent Rubrik cannot reproduce the Defect remotely, provide on-site access, if reasonably believed necessary by Rubrik for it to reproduce, analyze or remedy the Defect.
- 6.5. **Information and Cooperation.** To receive Support Services, Customer must provide Rubrik with the location and configuration of the applicable Hardware, and such other information, cooperation, and assistance as is reasonably required by Rubrik in order to provide the Support Services. Customer is solely responsible for providing a stable environment for all systems and networks designed to ensure successful backups (and all software, data and other information contained therein).
- 6.6. **Excluded Services.** Notwithstanding anything to the contrary in this Policy, Rubrik shall have no obligation to provide: (i) Support Services or replacement(s) for Defects or resolution of problems caused by accident, abuse, misuse, third-party product(s), a power surge, power failure or other Force Majeure event, any unauthorized disassembly, repair or modification, or any failure to maintain and use the Hardware in a manner consistent with the Documentation and written instructions from Rubrik; (ii) support or replacement of Hardware that Rubrik determines in its reasonable discretion does not have a Defect; (iii) third-party products required to operate the Hardware; (iv) delivery of any on-site Support Services, including but not limited to situations where, in Rubrik's reasonable opinion, a condition exists that represents a hazard to the safety of its employees or agents; (v) Support for or replacement of any Hardware in which the Hardware or parts have been replaced with any third-party product; or (vi) consumable parts (e.g. batteries, bulbs). Customer will be responsible for charges on a time and materials basis for Support Services provided as a result of any of the foregoing.
- 6.7. **Spare(s).** Customer shall only use Spares provided by Rubrik or the Manufacturer (as applicable). For Hardware Defects that require Spare or replacement Hardware, Customer will return the defective Hardware or Hardware component in accordance with Rubrik's instructions and RMA Procedures. Customer shall package and ship the parts replaced with the Spare(s) to Rubrik within fourteen (14) calendar days from the date of receipt of the Spare(s) or replacement Hardware, and Rubrik or its authorized reseller may invoice Customer for such parts that are not promptly returned within such timeframe.
- 6.8. Where Customer has purchased a Support Services Plan for Hardware that is to be installed or relocated outside of Rubrik's then-current geographic Support Services territory ("**Territory**"), Customer will contact Rubrik to discuss Rubrik's then-current Spares coverage model, to assess whether such Hardware will be supported outside of the Territory. If the Hardware (for which Support Services have been purchased) is relocated to a geographic location in which the Support Services Plan is available at a different level of service, Customer's Support Services Plan may need to be adjusted (which may include associated fees) based on local availability. Response time targets, Spares delivery times, and availability of a field service technician may be affected. Regardless of whether the Hardware is relocated inside or outside of the Territory, if Customer moves the installation location and does not notify Rubrik of such change at least sixty (60) days prior to a request for service, delivery of Spares and replacements and availability of a technician may be affected and Rubrik shall be excused from its performance under this Policy to the extent such performance has been affected by the relocation.
- 6.9. **Service Quality Assurance Check.** "**Service Quality Assurance Check**" means Rubrik's examination of Hardware to confirm that its condition is eligible to receive Support Services. Rubrik reserves the right to perform a Service Quality Assurance Check if: (i) a Support Service Plan is not purchased at the time the Hardware is purchased; (ii) there is a lapse in Support Service(s) of more than thirty (30) days; (iii) the Hardware is relocated by any party other than Rubrik; or (iv) as otherwise required by Rubrik or its third-party service provider if there is reason to believe the Hardware has been damaged. Customer agrees to permit access for the Service Quality Assurance Check and to pay the reasonable fees for the Service Quality Assurance Check.

7. SUPPORT SERVICES PLANS.

- 7.1. **Premium Support Services Plan.** The Premium Support Services Plan includes 24x7 Remote Technical Support. Customer may submit Remote Support Requests at any time, 24x7. Rubrik will respond to Customer's Remote Support Requests pursuant to the Response Time Targets table in Section 9 below. For Defects requiring Spare replacement, Rubrik will ship Spare(s) to Customer the same business day if the Defect is diagnosed and ordered before the Cut-off Time (as defined below), or the following business day if diagnosed and ordered after the Cut-off Time. For Hardware for which an End of Sale announcement has been made, additional time may be required for Spare(s)

delivery. Arrival of Spare(s) at Customer's location is subject to transit and customs processing. At Rubrik's expense, Customer will return the defective part within fourteen (14) days of receipt of the Spare(s) in accordance with Rubrik's instructions and RMA Procedures. Customer will pay Rubrik's invoice for defective parts that are not returned in a timely manner. The cut-off time for same business day shipment of Spares is 3:00 p.m. in Customer's local time zone Monday through Friday, excluding major local holidays ("**Cut-off Time**").

- 7.2. **Basic Support Services Plan.** The Basic Support Services Plan includes all elements of the Premium Support Services Plan as set out at Section 7.1 above, except that: (i) Rubrik will respond to Remote Support Requests during Customer's business hours (meaning Monday to Friday between the hours of 8:00am and 8:00pm in Customer's local time zone) pursuant to the 'Basic Support' column in the Response Time Targets table in Section 9 below; and (ii) Rubrik will respond to up to three (3) Remote Support Requests per year outside of Customer's business hours.

8. SUPPORT SERVICES PLAN ADD-ONS.

Each of the following Support Services Plan Add-Ons may be purchased for a separate fee:

- i. Customer Experience Manager.
- ii. Non-returnable Drive Service ("**NRD**"). NRD is available for purchase on all Hardware either (i) at initial Hardware purchase; or (ii) upon the expiration of the Hardware Warranty Period provided that Customer has an active Support Services Plan for the Hardware. The NRD permits Customer to keep or dispose of the failed hard disk drives and/or failed solid state drives. There is an annual fee per Hardware appliance for the NRD which applies regardless of the number of replacement drives that are requested. For the avoidance of doubt, the Hardware Warranty, as well as the Premium Support Services Plan includes complimentary exchange of a failed drive, provided that the failed drive is returned to Rubrik.

9. RESPONSE TIME TARGETS.

Severity Description	PREMIUM SUPPORT Initial Target Response Time (24x7)	BASIC SUPPORT Initial Target Response Time (only during Customer Business Hours)	Status Updates Target	Fix/Workaround Target
P1: Down system	30 mins	30 mins	Daily until fixed or a workaround in place	Continuous effort until workaround provided
P2: System working with reduced functionality (e.g. node offline)	2 hours	2 hours	Daily until fixed or a workaround in place	To be determined based upon the problem/request
P3: Operational but system has experienced a minor issue (e.g. snapshot failure)	8 hours or next business day (if the issue is raised after 6pm Customer's local time)	8 hours or next business day (if the issue is raised after 6pm Customer's local time)	Every 3 days	To be determined based upon the problem/request
P4: General question	Next business day	Next business day	To be determined based upon the problem/request	To be determined based upon the problem/request

Response Time Targets and Fix/Workaround Targets are subject to the exclusions listed in Section 6.6 above.

RUBRIK, INC. END USER LICENSE AGREEMENT

IMPORTANT: READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) BEFORE INSTALLING OR USING THE RUBRIK PRODUCTS (AS DEFINED BELOW). THIS IS A LEGAL AGREEMENT BETWEEN RUBRIK, INC. (“RUBRIK”) AND YOU OR THE ENTITY THAT YOU REPRESENT (“CUSTOMER”). THIS AGREEMENT GOVERNS CUSTOMER’S USE, INCLUDING ANY FREE TRIAL USE, OF RUBRIK’S PRODUCTS AND SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX OR BUTTON INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING, USING OR ACCESSING THE RUBRIK PRODUCTS, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT COPY, INSTALL, USE OR ACCESS THE RUBRIK PRODUCTS.

1. DEFINITIONS.

- 1.1 **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.2 **“Effective Date”** means the date Customer accepts the terms of this Agreement.
- 1.3 **“Business Contact Data”** means the names, email addresses, phone numbers and all other business-related information of each Party’s personnel, that may be collected or exchanged between the Parties in the ordinary course of maintaining the business relationship, such as contract management, sales and ordering, and business development as further described in Section 16.2 (Use of Business Contact Data).
- 1.4 **“Customer Personal Data”** means Personal Data (defined below) that is owned or controlled by Customer and which Rubrik, a Rubrik Affiliate or subcontractor may process in the course of providing the Products, Support Services and Professional Services under the Agreement.
- 1.5 **“Documentation”** means the Rubrik licensing guide available to Customer at <https://www.rubrik.com/en/legal> and the Rubrik user guides available to Customer on the Rubrik support portal.
- 1.6 **“Hardware”** means Rubrik hardware purchased by Customer.
- 1.7 **“Order”** means the purchase order or other agreed upon legally binding document placed by Customer which specifies the applicable term, quantities and description of the Products, Support Services and Professional Services purchased by Customer from a Rubrik authorized reseller.
- 1.8 **“Personal Data”** means (i) any information relating to an identified or identifiable natural person, and/or (ii) any information that identifies, relates to, describes, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Unless prohibited or specifically governed by applicable Data Protection Laws, Personal Data shall not include information or data that is anonymized, de-identified and/or compiled on a generic basis and which does not name or identify a specific person.
- 1.9 **“Product(s)”** means, collectively, Rubrik Hardware, Software and SaaS Services.
- 1.10 **“SaaS Services”** means a Rubrik cloud-based software-as-a-service offering purchased by Customer as specified in the applicable Order.
- 1.11 **“Professional Services”** means the implementation, configuration and training services as specified in an applicable Order.
- 1.12 **“Software”** means, collectively, Rubrik’s software and embedded firmware downloaded or accessed by Customer in object code form, as set out in the applicable Order. Software also includes all Updates, Upgrades, copies and alterations, modifications and derivative works thereof.
- 1.13 **“Term”** means the period of time from the Effective Date until the end of the applicable license term as set forth on the Order(s), including any renewal thereof.
- 1.14 **“Updates”** means patch releases, “bug” fixes, and maintenance updates for the Software or the SaaS Services.

- 1.15 **“Upgrades”** means new features included in Software or SaaS Services which Customer may purchase during the Term and which are subject to an additional charge. For clarity, if Customer purchases an Upgrade of Software, the entitlement to use the original Software terminates.

2. SOFTWARE LICENSE.

2.1 **Software License.** Subject to Customer’s compliance with the terms and conditions of this Agreement and Customer’s payment of all fees due, Rubrik grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as may be expressly permitted herein) license to use the Software and Documentation, only for Customer’s internal business purposes on Hardware or Rubrik-approved third-party hardware, in accordance with the Documentation and limited to the quantities and any other limitations set forth in the applicable Order. Customer may use the Products for the benefit of its Affiliates, and Affiliates may use the Products for their own benefit, but only in the quantities and capacity as set out in the applicable Order and subject to compliance with all terms of this Agreement. Customer guarantees that each Affiliate will fully perform its obligations hereunder, and Customer is responsible for any breach of this Agreement by its Affiliates.

2.2 **Term of License.** Software is licensed for the time period set forth in the applicable Order and either: (i) on a device basis, meaning Customer’s right to use the Software is tied to the life of the Hardware on which it was originally installed (for clarity, the Software is not portable to new Hardware or third-party hardware) (**“Life of Device License”**); or (ii) on a subscription basis, meaning Customer has the right to use the Software or SaaS Services for the period of time set forth in the applicable Order and any renewals thereof (**“Subscription License”**).

2.3 **SaaS Services Additional Terms.** If Customer acquires SaaS Services, subject to Customer’s compliance with this Agreement and payment of all fees due, Rubrik grants Customer the limited, non-exclusive, non-transferable right to access and use the SaaS Services for the Term, solely for Customer’s internal business purposes and for the number of users and/or the capacity specified in the applicable Order. Customer is solely responsible for maintaining the confidentiality of all usernames and passwords required for use of the SaaS Services and for all activities conducted in connection with the use of such passwords or access to the SaaS Services. Rubrik will use commercially reasonable efforts to provide consistent site availability for the SaaS Services during the Term (excluding scheduled maintenance and downtime, connectivity problems, Customer actions or misuse, or other matters outside Rubrik’s reasonable control). Rubrik does not warrant or guarantee uninterrupted availability. Customer’s use of the SaaS Services is subject to the Acceptable Use Policy (**“AUP”**) at <https://www.rubrik.com/en/legal>. Rubrik reserves the right to suspend or terminate Customer’s use of the SaaS Services if Rubrik becomes aware that Customer or any of its users use the SaaS Services in violation of the AUP, a material term of this Agreement, or any applicable law or regulations. Rubrik may also impose temporary limits on certain features and services or temporarily restrict Customer’s access to parts of the SaaS Services for maintenance, support or system administration purposes without notice or liability. Rubrik agrees to provide commercially reasonable notice under the circumstances of any such suspension before its implementation. Customer is solely responsible for the accuracy, quality, integrity, and legality, of all Customer data stored or uploaded to the SaaS Services. Upon the termination of this Agreement or expiration of the Term, Customer will have no further rights to access the SaaS Services hereunder. For a period of thirty (30) days after such termination or expiration, upon Customer’s prior written request, Rubrik will allow Customer limited access to retrieve any Customer data remaining on the SaaS Services. After such thirty (30) day period, Customer will have no further rights to access the SaaS Services.

2.4 **Open Source.** The Software may contain or be provided with components subject to the terms and conditions of open source software licenses (**“Open Source Software”**). Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable Open Source Software end user license; however, the license to the Software in Section 2.1 (Software License) includes the right to use the Open Source Software incorporated in the Software in the same manner and to the same extent as the Software.

3. USE RESTRICTIONS. Customer will not, nor will Customer encourage or assist others to:

- i. Copy, modify, encumber or distribute the Software, SaaS Services or Documentation (except for a reasonable number of copies of the Documentation for internal use);
- ii. Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Products or create any derivative works including, without limitation, customization, translation or localization;
- iii. Sell, license, sublicense, rent, lease, lend or transfer the Software or SaaS Services or use the Software or SaaS Services for the benefit of any third party, including but not limited to timesharing or service bureau purposes;
- iv. Remove or obscure any proprietary notices on the Products or Documentation;
- v. Publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Software or SaaS Services and Trial Products unless authorized in writing by Rubrik;
- vi. Use any software without first purchasing the applicable license; or

- vii. Use the Software or the SaaS Services for any purpose or in any manner not authorized by this Agreement (including, without limitation, for any purpose competitive with Rubrik).

4. PROPRIETARY RIGHTS. Software, SaaS Services and Documentation are licensed to Customer and not sold. Rubrik and its licensors retain all title, ownership rights, and intellectual property rights in and to the Software, SaaS Services and Documentation, in any form or format, along with all copies, and all tools, routines, programs and other technology used or provided in the provision of Support Services. The Software, SaaS Services and Documentation are protected by copyright and other intellectual property laws and by international treaties. This Agreement does not grant Customer any rights not expressly granted herein. All trademarks used in connection with the Software, Documentation and SaaS Services are owned by Rubrik, its affiliates, licensors and other suppliers, and no license to use any such trademarks is provided hereunder. Customer may elect to provide suggestions, comments for enhancements or functionality, or other feedback to Rubrik with respect to the Products (including Trial Products), Support Services, and Professional Services ("**Feedback**"). Customer is not required to provide Feedback to Rubrik, but if Customer in its sole discretion provides Feedback, Customer hereby grants Rubrik a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any Feedback as it sees fit without obligation or restriction of any kind. Customer will not provide any Feedback subject to any terms that would impose any obligation on or require attribution by Rubrik.

5. ORDERS; FEES. Customer will purchase Products from a Rubrik authorized reseller pursuant to a separate agreement between Customer and such reseller ("**Partner Agreement**"). Customer shall pay the reseller all amounts due and owing under an Order (along with all taxes, tariffs, and duties) in accordance with the Partner Agreement. The Partner Agreement is between Customer and the reseller and is not binding on Rubrik. In the event Customer places an Order in a third-party cloud marketplace in which Rubrik has agreed to participate: (i) Customer is responsible for payment of all fees (along with all taxes, tariffs, and duties) in accordance with the terms of the Order placed in such cloud marketplace; and (ii) Hardware title will transfer upon delivery to Customer, FCA Origin (Rubrik or Rubrik's manufacturing facility), for shipment to the location specified in the Order.

6. AUDIT. During the Term and for a period of one (1) year thereafter, Rubrik (or its independent third-party auditors) has the right to reasonably audit Customer's relevant facilities, systems, and records to confirm Customer's compliance with this Agreement. Rubrik may conduct no more than one (1) audit per twelve (12) month period and Customer shall reasonably cooperate with Rubrik (or its independent third-party auditors) for such audit. If an audit discloses Customer has installed, accessed, used, or otherwise permitted use and access to the Software or SaaS Services in a manner that is not permitted expressly by this Agreement, Customer agrees to reimburse the applicable channel partner, or Rubrik, promptly for any unpaid fees (if applicable). In addition, if such audit reveals underpayment or non-compliance in excess of 10% of fees payable by Customer, Customer agrees to reimburse Rubrik for all of Rubrik's reasonable expenses related to such audit.

7. TRIAL PRODUCTS.

7.1 Trial Product Use. Rubrik may provide certain Software, SaaS or Hardware products to Customer at no charge specifically for trial purposes ("**Trial Products**"). Subject to Customer's compliance with this Section 7 (Trial Products), Rubrik grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to install and use the Trial Products solely for internal, non-commercial evaluation purposes for thirty (30) days from Customer's receipt of the Trial Products, unless otherwise extended by Rubrik in writing in its sole discretion ("**Trial Term**"). In the event the Trial Products are not yet generally available and provided to Customer in an beta or other pre-release format, Customer acknowledges, as a condition of their use: (i) such Trial Products are under development and not at the level of performance or compatibility of generally available products; (ii) may not operate correctly, may contain errors, bugs, and design flaws; (iii) may be modified by Rubrik prior to being made generally available; (iv) may not be made available for general release; and (v) do not include Support Services. Customer agrees to use reasonable efforts to notify Rubrik of any bugs or problems in the Trial Products.

7.2 Restrictions. Customer will not upload or store Customer Personal Data or Customer Confidential Information into any Trial Product, and Customer will only use the Trial Products with non-production data in a non-production environment. If Customer elects to upload or store production data, Customer assumes all risk in doing so, and Rubrik shall have no liability with regard thereto, including for any loss or corruption of Customer data. Upon expiration or termination of the Trial Term, Customer's right to use the Trial Product ends, and Customer's access to SaaS Services Trial Products will cease. Customer will email returns@rubrik.com for Trial Product return instructions. Customer shall securely delete all Customer data from the Trial Products upon termination or expiry of the Trial Term. Notwithstanding the foregoing, Customer is responsible for the Trial Products (except for reasonable wear and tear), until the Trial Products are back within Rubrik's possession and control. Customer acknowledges that any data remaining on any Trial Product returned to Rubrik may be disposed of or destroyed by Rubrik without any liability to Rubrik. At all times, Rubrik retains title and ownership to the Trial Products. RUBRIK, ITS SUPPLIERS, AND LICENSORS SHALL HAVE NO LIABILITY UNDER ANY LEGAL OR EQUITABLE THEORY IN RELATION TO TRIAL PRODUCTS FOR LOSSES, COSTS, OR DAMAGES OF ANY KIND IN EXCESS OF ONE THOUSAND DOLLARS (\$1000).

8. CONFIDENTIALITY. Customer and Rubrik may disclose Confidential Information to each other during the Term. “**Confidential Information**” means all proprietary business and technical information disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) which is in tangible form and labeled “confidential” or the like, or that reasonably should be understood to be confidential given the circumstances of disclosure and the nature of the information. Confidential Information includes, but is not limited to, the Products, Trial Products, Documentation, strategic roadmaps, product plans, product designs and architecture, technology and technical information, security processes, security audit reviews and business and marketing plans. Confidential Information will not include information that: (i) was already in Receiving Party’s possession without confidentiality obligations; (ii) is rightfully received by Receiving Party without confidentiality obligations; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or (iv) is publicly disclosed by the Disclosing Party. The Receiving Party will protect Confidential Information received from the Disclosing Party using the same degree of care as it uses to protect its own similar confidential materials, but in no event using less than reasonable care. The Receiving Party will disclose Confidential Information only to its employees, alliance partners or contractors who have a need to know for purposes of this Agreement and who are under a written obligation of confidentiality no less protective than this Agreement. Confidential Information may be disclosed in response to a subpoena or order of a court or governmental agency, provided however, that if not otherwise prohibited, the Receiving Party will notify the Disclosing Party promptly of such disclosure to enable the Disclosing Party to seek an appropriate protective order. The Parties’ obligations with respect to Customer Personal Data are set forth in Section 9 (Security; Protection of Personal Data) rather than in this Section 8 (Confidentiality). Upon expiration or termination of this Agreement for any reason, the Receiving Party will, upon request, return or destroy the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain such copies of Disclosing Party’s Confidential Information stored electronically on data archives or back-up systems or to comply with the laws or regulations applicable to the Receiving Party, provided that such copies shall at all times be subject to the terms of this Agreement while in Receiving Party’s possession or control.

9. SECURITY; PROTECTION OF PERSONAL DATA. During the Term of this Agreement, Rubrik will implement and maintain commercially reasonable administrative, physical and technical safeguards and measures designed to address the security, confidentiality and availability of the Products, Support Services and Professional Services as more fully set forth in the Data Security Schedule and the Data Processing Addendum (“**DPA**”) which are available at <https://www.rubrik.com/en/legal>. Customer acknowledges and agrees that the DPA will apply to the extent Rubrik is required to process Customer Personal Data in connection with the SaaS Services, Professional Services and Support Services. Customer must promptly notify Rubrik of any unauthorized use of or access to the Products purchased by Customer.

10. SUPPORT. Support Services for the Products are covered in the then-current support terms available at <https://www.rubrik.com/en/legal>, which are incorporated by reference into this Agreement to the extent applicable.

11. PROFESSIONAL SERVICES. Customer may place an Order for Professional Services. Professional Services may be performed by Rubrik or sub-contractors acting on Rubrik’s behalf. In regard to Professional Services, Rubrik warrants that: (i) it and each of its employees, consultants and subcontractors, if any, have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Professional Services; and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards. Rubrik shall own all rights, title and interest in and to any deliverables provided to Customer and all related intellectual property rights (excluding Customer’s Confidential Information), unless otherwise set forth in a mutually agreed upon Statement of Work (“**SOW**”). Except for those Professional Services with a term specified in an Order or SOW, all training Professional Services must be used within twelve (12) months of the date of the Order, and all other Professional Services must be used within six (6) months of the date of the Order, after which, all unused Professional Services will expire. Orders for Professional Services are not transferable to any other Product or Service. As a condition to Rubrik providing Professional Services hereunder, Customer shall: (a) provide good faith cooperation and access to such information, facilities, and equipment as may be reasonably required in order to provide the Professional Services; and (b) provide such personnel assistance as may be reasonably requested from time to time. If, through no fault or delay by Customer, or any failure by Customer or Customer’s representatives to perform in accordance with this Section 11 (Professional Services), the Professional Services do not conform to the foregoing warranty, and Customer notifies Rubrik within ten (10) days of Rubrik’s completion of the Professional Services, Rubrik will re-perform the non-conforming portion(s) of the Professional Services at no additional cost to Customer.

12. WARRANTIES AND DISCLAIMER.

12.1 Software Warranty. Rubrik warrants to Customer, for ninety (90) days from the date of delivery (“**Software Warranty Period**”), the Software will conform in all material respects to the applicable Documentation (“**Software Warranty**”). Rubrik’s delivery of any Update does not extend the Software Warranty Period applicable to the Software.

12.2 SaaS Services Warranty. Rubrik warrants to Customer during the Term (“**SaaS Services Warranty Period**”), the SaaS Services will conform in all material respects to the applicable Documentation (“**SaaS Services Warranty**”).

12.3 Remedy; Exclusions. Rubrik's sole obligation under the Software Warranty or SaaS Services Warranty (as applicable), and Customer's exclusive remedy, is to use commercially reasonable efforts to correct the non-conformity during the applicable Software or SaaS Services Warranty Period. If Rubrik is not able to correct the non-conformity in the Software or SaaS Services (as applicable) such that it complies with the applicable Warranty, Rubrik will process a refund of the unused, prepaid fees for such non-conforming Software or SaaS Services via the applicable channel partner. In the event of a refund in accordance with the foregoing, Customer's right to use the Software or SaaS Services for which the refund was processed terminates. Customer's obligation is to provide all information reasonably requested to enable Rubrik to cure the deficiencies. The foregoing warranties do not apply to any Software or SaaS Services (as applicable): (i) that are installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, this Agreement or Rubrik's written instructions; (ii) that are repaired, altered or modified other than by Rubrik or its authorized service provider; or (iii) where the issue is caused by any failure of third-party software or cloud services not supplied by Rubrik.

12.4 Disclaimer of Warranties. EXCEPT AS PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, RUBRIK AND ITS LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RUBRIK DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA, THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE PRODUCTS WILL BE COMPATIBLE WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. RUBRIK, ITS SUPPLIERS AND LICENSORS ARE NOT LIABLE OR RESPONSIBLE FOR ANY WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY A CHANNEL PARTNER OR OTHER THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, TRIAL PRODUCTS ARE PROVIDED AND LICENSED TO CUSTOMER ON AN "AS IS" BASIS, AND ALL WARRANTIES AND INDEMNITIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

13. INDEMNIFICATION.

13.1 Intellectual Property Indemnification. Rubrik agrees to defend or settle, at Rubrik's option, a third-party claim or cause of action against Customer alleging that the Products infringe or misappropriate a U.S. patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against Customer by a court of competent jurisdiction or as agreed to in a settlement. Rubrik's obligations hereunder do not apply with respect to any Claim that arises out of: (i) any unauthorized use, reproduction or distribution of the Products; (ii) use of the Products in combination with any other software or equipment not specified by the Documentation if such Claim would have been avoided without such combination; (iii) Products that were modified after delivery without Rubrik's prior written authorization; or (iv) Customer's continued use of the allegedly infringing Product after Rubrik supplied a modified or replacement non-infringing Product. If any Claim arises, Rubrik may, at its sole option and expense: (a) replace or modify the affected Product to make it non-infringing; (b) procure a license for Customer's continued use of the affected Product; or if (a) and (b) are not commercially viable (as determined by Rubrik in its sole discretion), accept return of the affected Products and terminate Customer's rights thereto, in which case Rubrik will process a pro-rated refund for the applicable prepaid unused fees for such Product covering the remainder of the Term via the applicable channel partner. For Life of the Device licensed Software and Hardware, the refund will be based on a straight-line amortization over a three (3) year term beginning on the date of initial delivery of the Software and Hardware. This Section 13.1 (Intellectual Property Indemnity) states Customer's sole and exclusive remedy, and Rubrik's sole liability, with respect to infringement of intellectual property rights.

13.2 SaaS Services Indemnity. Customer agrees to defend and indemnify Rubrik from and against any loss, damage, or cost arising from a third-party claim that Customer data stored or uploaded into the SaaS Services, or Customer's use of the SaaS Services (i) infringes an intellectual property right or misappropriates a trade secret of a third party; or (ii) violates the AUP or this Agreement.

13.3 Indemnification Process. As a condition of receiving indemnity as described in Section 13 (Indemnification), the party seeking the indemnity will provide the other party with: (i) prompt written notice of the claim, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party is prejudiced by such failure; (ii) complete control over the defense and settlement of the claim (provided that the indemnifying party will not settle any claim without the other party's prior written permission if the settlement fails to unconditionally release the indemnified party from all liability pertaining to the claim, such permission not to be unreasonably withheld, delayed or conditioned); and (iii) reasonable assistance in connection with the defense and settlement of the claim.

14. LIMITATION OF LIABILITY.

14.1 Disclaimer of Consequential Damages. EXCEPT FOR CUSTOMER'S BREACH OF SECTIONS 2.1 (SOFTWARE LICENSE) AND 3 (USE RESTRICTIONS) OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT

LIMITATION, LOST PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA OR THE COST OF COVER, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THIS EXCLUSION WILL NOT APPLY TO THE EXTENT THE EXCLUSION IS PROHIBITED BY LAW.

14.2 Limitation of Liability. IN NO EVENT WILL RUBRIK'S, ITS AFFILIATES' AND ITS LICENSORS' TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO RUBRIK (OR TO THE APPLICABLE CHANNEL PARTNER) FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATION DOES NOT LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

15. TERM AND TERMINATION.

15.1 Term; Termination for Cause. This Agreement begins on the Effective Date and continues until the end of the Term. Notwithstanding the foregoing, a Party may terminate this Agreement if the other Party: (i) materially breaches this Agreement and such breach is not cured within thirty (30) days of such Party's receipt of written notice describing the breach; or (ii) becomes insolvent, admits in writing of its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

15.2 Post-Termination Obligations. Upon expiration or termination of this Agreement, including if Customer does not renew its applicable Subscription License, the license granted hereunder will immediately terminate and Customer will stop using the Software. Customer will uninstall and destroy the Software and Documentation or undertake such actions as to ensure that the Software and Documentation will not be used after the effective date of termination. For clarity, upon termination or expiration, Customer loses entitlement to all Software features; however, Customer data will remain on the Hardware for archival purposes.

15.3 Surviving Provisions. Upon expiration or termination of this Agreement, the following sections will survive: Sections 1 (Definitions), 4 (Proprietary Rights), 5 (Orders; Fees), 6 (Audit), 7.2 (Restrictions) 8 (Confidentiality), 12.4 (Disclaimer of Warranties), 13 (Indemnification), 14 (Limitation of Liability), 15.2 (Post-Termination Obligations) 16 (General).

16. GENERAL.

16.1 Independent Contractors. The Parties are independent contractors under this Agreement and nothing herein shall authorize one Party to have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other.

16.2 Use of Business Contact Data. Each Party consents to the use of its Business Contact Data by the other Party for the purposes of developing and maintaining the business relationship, and each Party will process the other Party's Business Contact Data consistent with applicable data protection laws and internal policies. Unless otherwise prohibited by applicable data protection laws, the receiving Party may transfer such data to, or access such data from, any country in which such Party or its Affiliates conduct business relating to this Agreement. Each Party will use reasonable and appropriate security measures to protect such Business Contact Data; and each Party undertakes to notify its personnel of the other Party's proposed use of such data, and other purposes as set out in the using Party's global data privacy policy. Customer may access Rubrik's privacy notice at <https://www.rubrik.com/en/legal/privacy-policy>.

16.3 Assignment. Customer will not, directly, indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Customer's rights hereunder or delegate performance of any of Customer's duties hereunder without the prior written consent of Rubrik. Rubrik may assign this Agreement without obtaining Customer's consent: (i) to an Affiliate of Rubrik; or (ii) to a successor in interest in connection with a merger, reorganization or a sale of all or substantially all of the assets of Rubrik. Any assignment in violation of the foregoing shall be void and without effect. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their permitted successors and assigns.

16.4 Export Controls and Trade Laws. Customer will comply with all applicable laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Without limiting the foregoing, Customer agrees that Customer will not export, re-export, download, or otherwise transmit Confidential Information or the Products: (i) to any country or region subject to a U.S. embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any U.S. Government restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Products or Confidential Information will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes.

16.5 Enhancement Data. Rubrik may collect machine data generated by the Software and SaaS Services, together with Customer's usage metrics (collectively, "**Enhancement Data**"). Rubrik uses Enhancement Data to operate, manage, debug, improve and secure the Software and SaaS Services and for internal analytical purposes. Enhancement Data include, but are not limited to, the amount of data scanned and moved, performance characteristics, and administrative user actions with the Products. For the avoidance of doubt, backups Customer creates using the Products are not Enhancement Data collected by Rubrik.

16.6 Third Party Beneficiaries. Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.

16.7 U.S. Federal Government Users. This Section 16.7 (U.S. Federal Government Users) applies only if Customer is a U.S. Federal Government Customer. The Software, SaaS Services and Documentation are "commercial" computer software and documentation, and are licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to Rubrik's applicable expenses associated with the cost of audit specified in Section 6 (Audit) of this Agreement. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this Agreement is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C §516. All other terms remain in effect as written.

16.8 Use of Name. During the Term of the Agreement, Rubrik may refer to Customer as a Rubrik customer in sales and marketing materials and public statements, subject to Customer's trademark and logo usage guidelines if Customer provides such guidelines to Rubrik. Customer may send an email to Rubrik at stories@rubrik.com with its trademark and logo usage guidelines, or if Customer does not wish to be referred to as a Rubrik customer.

16.9 Anti-corruption. Each Party will comply with all applicable laws relating to anti-corruption or anti-bribery, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Rubrik's employees, agents, resellers or subcontractors in connection with this Agreement and that Customer will use reasonable efforts to promptly notify Rubrik should Customer learn of any violation of this restriction.

16.10 Severability. In the event that any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, void or unenforceable, such provision will be limited or eliminated to the extent necessary so that the remainder of this Agreement will continue in full force and effect.

16.11 Nonwaiver. The failure of Customer or Rubrik to enforce any provision of this Agreement will not be construed as a waiver of such provision or of any other provision of this Agreement.

16.12 Force Majeure. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement to the extent caused by circumstances beyond the reasonable control of the Party including (without limitation) pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, internet service provider failures or delays, denial of services attacks or other similar causes, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruptions or material shortages.

16.13 Integration; Order of Precedence. This Agreement constitutes the entire agreement between Customer and Rubrik and supersedes any and all prior agreements or communications between the parties with regard to the subject matter hereof. This Agreement may not be amended or modified except by a writing that specifically refers to this Agreement and is signed by an authorized representative of both Customer and Rubrik. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any purchase order, acknowledgement, confirmation or other document issued by or on behalf of Customer, and such documents are of no force or effect. Notwithstanding any agreement Customer may have previously accepted during the installation of any prior versions of the Products, this Agreement applies to the Software, SaaS Terms and any Updates or Upgrades (except to the extent such Updates or Upgrades are accompanied by new or additional terms, in which case the different terms apply prospectively and do not alter Customer's or Rubrik's rights relating to pre-updated Software).

16.14 Ambiguities and Notices. Customer and Rubrik have participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. Any notices under this Agreement shall be delivered in writing. For Rubrik, notices shall be sent to legal@rubrik.com.

16.15 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without applying conflict of law rules. With respect to all disputes and actions arising from or related to this Agreement, the Parties irrevocably consent to exclusive jurisdiction and venue in the state and federal courts located in Santa Clara County. The United Nations Convention of Contracts for the International Sale of Goods (1980) is hereby excluded in its

entirety from application to this Agreement. Nothing in this Section 16.15 (Governing Law) will limit or restrict either Party from seeking injunctive or other equitable relief from a court of competent jurisdiction.

16.16 Electronic Signature. The Parties expressly agree that this Agreement may be signed electronically. In the event of a dispute where the law is unclear as to the treatment of electronic signatures, the U.S. Electronic Signatures in Global and National Commerce Act ("ESIGN") controls.

SCALE

Terms of Support and Maintenance

SCALE COMPUTING, INC.
TERMS OF SUPPORT AND MAINTENANCE

These Terms of Support and Maintenance (these “**Terms**”) set forth the terms pursuant to which Scale Computing, Inc. (“**Scale Computing**”) will provide Support Services to the individual or entity who has purchased or licensed a Covered Product (“**Customer**”). Each of Scale Computing and Customer is a “**Party**” and together, the “**Parties**.” By entering into an Order Form for Support Services, purchasing a Covered Product, or otherwise using or accessing a Covered Product, Customer agrees to be bound by these Terms.

1. DEFINITIONS

- 1.1. “**Clustered System**” means three or more Covered Products that have been joined together in a Scale Computing-supported configuration utilizing native hardware and software components to create a single unified system.
- 1.2. “**Covered Product**” means a hardware appliance or software sold by Scale Computing or Scale Computing’s authorized reseller to Customer for which Customer has purchased Support Services.
- 1.3. “**Customer Data**” means any electronic data submitted by or on behalf of Customer to Scale Computing in connection with the Support Services.
- 1.4. “**Dark Site**” means a location that does not have internet capabilities or which is not connected to the internet.
- 1.5. “**Error**” means any failure of a Covered Product to substantially conform to its published specifications.
- 1.6. “**High Temperature Alert**” means an alert shown by a Covered Product indicating that the temperature of the Covered Product or a component thereof is approaching or has exceeded the manufacturer’s temperature thresholds for safety and proper operation of such Covered Product or component.
- 1.7. “**Order Form**” means the order form, purchase order, or other ordering document pursuant to which Customer is entitled to obtain Support Services from Scale Computing.
- 1.8. “**Severity Levels**” means the severity level classifications and descriptions and their corresponding service objectives and initial response times, as set forth in Exhibit A.
- 1.9. “**Software**” means the SC//HyperCore product.
- 1.10. “**Software Update**” means improvements, bug fixes, error corrections, and patches that may include minor new features, but not architectural changes or major new features to the Software. A Software Update is indicated by a change in the version number after the first decimal (e.g. version 1.0.0 to 1.1.0).
- 1.11. “**Support Hours**” means the support hours corresponding to the Support Package.
- 1.12. “**Support Package**” means the support package purchased by Customer, as indicated on the Order Form.
- 1.13. “**Support Services**” means the technical support, maintenance, and other services provided by Scale Computing, as set forth in these Terms.

2. SUPPORT SERVICES.

- 2.1. Generally. During the Term, and subject to Customer’s compliance with these Terms, Scale Computing will provide the Support Services to Customer based on Customer’s purchased Support Package. During the term of the Support Services, Scale Computing will provide Customer with assistance to diagnose and

resolve technical problems with the Covered Products through Scale Computing's website, by telephone, or by other means specified by Scale Computing.

- 2.2. Scale Support Web Site. Scale Computing will provision Customer an account to access Scale Computing's online customer support portal (the "**Support Portal**"). Customer will use the Support Portal only for supporting its authorized use of the Covered Products and for logging a support ticket. Customer agrees to keep the credentials used to access the Support Portal confidential and secure, and accepts responsibility for all activities that occur under its account. Customer agrees to immediately notify Scale Computing in the event Customer believes that Customer's account is no longer secure. Scale Computing may terminate or suspend Customer's access to the Support Portal, if Scale Computing, in its sole discretion, determines Customer's account is no longer secure. All software that is available for download through the Support Portal will be licensed to Customer under the same terms as those covering Customer's use of the Covered Product unless otherwise indicated. By downloading, installing, or otherwise using such software, Customer hereby accepts such additional or different license terms. Customer agrees that Scale Computing may track or collect information or data related to Customer's use of Scale Computing's website or Support Portal, and hereby consents to Scale Computing's use thereof in connection with its business.
- 2.3. Error Corrections. Scale Computing will use commercially reasonable efforts to correct or minimize the effects of any reproducible and demonstrable Error reported to Scale Computing by Customer in accordance with the service and response objectives for the Severity Level of such Error.
- 2.4. Security. Scale Computing will maintain appropriate administrative, physical, and technical safeguards, reasonably designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure. In addition, Scale Computing will also maintain procedures reasonably designed to respond to security incidents and will notify Customer after becoming aware of any unlawful access or unauthorized acquisition or disclosure of Customer Data following determination by Scale Computing that such security incident has occurred.
3. **FULL SUPPORT**. If Customer has an active Support Package containing full support (as indicated in the Support Portal), Scale Computing will provide the following support for the applicable Covered Products. For clarity, Section 3.1 applies to Software, and the other Sections in this Section 3 apply to hardware:
 - 3.1. Software Support. Scale Computing will provide Support Services for Software, as described in Section 4.
 - 3.2. Hardware Failure Analysis. Upon receipt of a Customer's report that a Covered Product has failed, Scale Computing may review such allegedly failing Covered Product or component and perform a failure analysis to determine the cause of the alleged non-conformance. In the event that such failure may be the result of defective materials or workmanship, Scale Computing may, at its option, repair or place such Covered Product or component, and issue a return material authorization ("**RMA**") in accordance with the applicable Support Package. Customer shall return such Covered Product or component to Scale Computing in accordance with Section 3.3 below. Scale Computing may further examine the allegedly failing Covered Product or component upon receipt thereof to confirm the reason for the failure.
 - 3.3. Return of Products. Upon receipt of an RMA, Customer shall package and ship the Covered Products and components identified in the RMA to Scale Computing within 15 days from when Customer receives a replacement part or as otherwise requested by Scale Computing. Customer shall ensure that the RMA number is marked and visible on the outside of the package, and the package is sent prepaid, insured, and packaged appropriately for safe shipment of the Covered Products or components. Scale Computing may reject any packages sent that do not comply with the foregoing. Customer may contact Scale Computing to obtain instructions and packaging materials (as available) for safe shipment of Covered Products or components. Title and risk of loss to any returned Covered Products or components shall transfer to Scale Computing upon receipt. If the failure is due to defective materials or workmanship, Scale Computing will bear all freight expenses for returned Covered Products or components, provided Customer complies with the process set forth in this Section 3.3 and utilizes Scale Computing's designated carrier.
 - 3.4. Spare Parts. Customer may purchase spare parts by submitting a purchase order to Scale Computing. Any

purchase of spare parts is subject to and governed by these Terms. Such spare parts will be subject to the original warranty. Title to, and risk of loss of, the spare parts will pass to Customer when such spare parts are entrusted to a carrier. Any and all legal terms in a customer's purchase order are null and void. Payments for spare parts will be made as directed by Scale Computing.

- 3.5. **Excluded Coverage.** For clarity, Scale Computing will not be responsible for replacing or repairing any Covered Products or components with failures caused by: (a) issues external to the Covered Product, such as issues with Customer's network or systems, (b) improper use or installation, or (c) damage to the Covered Product while in Customer's possession or control (each an "**Out of Warranty Cause**"). If Scale Computing determines that the failure of a Covered Product or component is caused by an Out of Warranty Cause, Scale Computing may invoice Customer for, and Customer agrees to pay, any costs incurred by Scale Computing for diagnosing the cause of such failure, for any related shipping costs, and, to the extent Scale Computing has repaired or replaced the failed Covered Product or component, the cost of such repair or replacement. Replacing or repairing any Covered Product or component shall not extend any warranty covering the replaced Covered Product or component.
- 3.6. **Opened Hardware Covers.** Covered Products may contain mechanisms or devices to detect whether the Covered Product has been opened or any protective casing has been removed or tampered with. Scale Computing shall have no obligation to provide support for any Covered Product that Scale Computing determines has been opened or for which any casing has been removed or tampered with unless Customer does so in accordance with Scale Computing's express written instructions.
4. **SOFTWARE SUPPORT.** If Customer has an active Support Package specified as containing full support or Software-only support, Scale Computing will provide the following support for Software:
 - 4.1. **Software Updates.** Scale Computing will make Software Updates available to Customer, if, as and when Scale Computing makes any such Software Update generally available to its other customers. Updates are licensed under the terms of the Software unless otherwise stated.
 - 4.2. **Documentation.** Customer may access Scale Computing's most recently published support documentation on Scale Computing's website, through the Support Portal.
5. **FULL SUPPORT ELIGIBILITY.** For the avoidance of doubt, Customer will be entitled to full support (i.e., coverages for hardware and software) for Covered Products, when Customer has purchased a Support Package that includes full support from Scale Computing. If Customer purchased support from a third party, such third party support may include hardware-related support to be provided by such third party, and Software-only support to be provided by Scale Computing.
6. **ON-SITE INSTALLATION.** Scale Computing may, upon Customer's request, agree to provide on-site installation. If on-site installation is included in Customer's Support Package, such installation will be offered on a one time basis as a separate charge to Customer. Without limiting the foregoing, future on-site support may be provided pursuant to a separate written agreement between Scale Computing and Customer.
7. **DARK SITES SUPPORT.** In the event Customer operates a Covered Product from a Dark Site, or a Covered Product is not connected or has limited access to the internet ("**Dark Products**"), Customer is responsible for ensuring Scale Computing has remote access to the Dark Products sufficient to allow Scale Computing to provide the Support Services, such as, by way of example, via lights-out management, KVM over IP, or remote terminal access. Scale Computing will use commercially reasonable efforts to provide Customer support for Dark Products during Scale Computing's Support Hours only if: (a) Customer has an active Support Package that includes Dark Site support, and (b) Scale Computing has sufficient access to provide the Support Services. Customer may purchase Remote Access Mechanisms from Scale Computing upon request.
8. **EXCLUSIONS, LIMITATIONS AND CONDITIONS TO SUPPORT SERVICES.**
 - 8.1. **Services Not Covered.** Notwithstanding anything to the contrary in these Terms, the Support Services shall not include, and Scale Computing will have no obligation to provide Support Services for any Errors,

failures, defects or other issues caused by or resulting from:

- 8.1.1. Customer's failure to implement any Software Update;
- 8.1.2. Changes made by Customer or a third party to an operating system, network configuration or environment that adversely affects a Covered Product;
- 8.1.3. Configuration of the Customer's network (except for configuration of the Customer's network done in accordance with Scale Computing's written instructions for installation, or maintenance of a Covered Product);
- 8.1.4. Any repairs, alterations or modifications made to a Covered Products other than those made by or at the direction of Scale Computing;
- 8.1.5. Use of a Covered Product in a manner other than as specified in the applicable documentation or specifications;
- 8.1.6. Customer's installation, operation, repair, or maintenance of a Covered Product in a manner not in accordance with Scale Computing's instructions
- 8.1.7. The combination, replacement, use, or interconnection of a Covered Product (or any part thereof) with other software or hardware that was not supplied or approved by Scale Computing;
- 8.1.8. Fire or water damage, earthquakes, lightning, or other acts of nature, or other causes external to a Covered Product;
- 8.1.9. Abnormal physical or electrical stress;
- 8.1.10. Customer's or a third party's negligence or accidental damage;
- 8.1.11. Customer's failure to provide and maintain adequate electrical power, cooling or humidity controls, in accordance with a Covered Product's specifications;
- 8.1.12. Excessive wear or deterioration of a Covered Product;
- 8.1.13. Relocation of a Covered Product (except as authorized by Scale Computing in accordance with Section 10);
- 8.1.14. Breach of Customer of these Terms or of the license agreement governing Customer's use of a Covered Product;
- 8.1.15. Customer's refusal to follow Scale Computing's instructions, implement any Error correction, or install a replacement part made available to Customer by Scale Computing or its designee.

8.2. Limitations on Support Services.

- 8.2.1. *Single Node Systems.* With the exception of HyperCore Edge systems, in the event Customer operates a Covered Product by itself and not in a Clustered System ("SNS System"), as a condition to Scale Computing's obligation to provide Support Services for the SNS System, Customer must have an active Support Package for the SNS System, and must replicate Customer's applications and data to another system sufficient to allow Customer to failover to such system and run its applications and access its data while the SNS System is inoperable for any reason. In the event Scale Computing provides Support Services for a Covered Product that has not been so replicated, then, without limiting any other limits of Scale Computing's liability arising out of or in connection with the subject matter hereof, Scale Computing shall have no liability for any data, productivity, monetary or business losses incurred by Customer in connection with providing such Support Services. An SNS System can be operated as a business resilience system only if purchased as a HyperCore BRS limited license type. Customer must use a data backup service when Customer is using the HyperCore BRS limited license type. For the avoidance of doubt, Scale Computing shall have no liability for any downtime or data loss experienced by Customer in connection with the BRS for SNS Systems, whether the underlying data is subject to backup or not.
- 8.2.2. *Clustered Systems.* Each Covered Product in a Clustered System must have an active Support Package in order to receive Support Services. Scale Computing will have no obligation to provide Support Services to any Covered Products in a Clustered System if any individual Covered Product within the Clustered System does not have an active Support Package that includes the type of Support Service requested.

- 8.3. Customer Obligations. Scale Computing's obligation to provide the Support Services is conditioned on Customer's fulfillment and compliance with the following obligations.

- 8.3.1. *Maintenance.* Customer will maintain the installation site, the Covered Products, and the operating environment for the Covered Products in good working order and in accordance with the specifications and documentation for the Covered Products, including any manufacturer's specifications for the Covered Product or a component thereof.
 - 8.3.2. *Personnel.* Customer shall only allow use of the Covered Products by competent, trained personnel.
 - 8.3.3. *Software Releases.* In order to receive Support Services, Customer must implement all Software Updates in accordance with on Scale Computing's Software Support Matrix (available at <https://community.scalecomputing.com/s/article/Scale-Computing-Software-Support-Matrix> or a successor URL).
 - 8.3.4. *Cooperation.* Customer will reasonably cooperate with Scale Computing and assist as reasonably requested by Scale Computing in connection with Scale Computing's provision of the Support Services. Such cooperation shall include: (a) providing Scale Computing with remote access to the Covered Products as may be necessary to provide the Support Services, (b) providing Scale Computing with the information about Errors (as set forth in subsection 8.3.5 below), and (c) reasonable assistance as may be required to diagnose or service a Covered Product, including restarting the system, logging or running operational readiness tasks, as may be requested by Scale Computing.
 - 8.3.5. *Notification.* Customer shall promptly notify Scale Computing of any Errors with information sufficient to allow Scale Computing to reproduce the Error ("**Error Notification**"). The Error Notification shall include a description of the Error, including, if applicable, a description of any physical indicators of the Error, alarm codes, system logs, or any other information reasonably requested by Scale Computing. Error Notifications made via email will, by default, be treated as having a Severity Level of 4 (as described in the Severity Levels). Any software or product information provided by Customer to Scale Computing in connection with the Support Services may be freely used by Scale Computing without restriction.
 - 8.3.6. *Designated Contact.* Customer will designate a primary contact and an alternate contact (each a "**Designated Contact**") that Scale Computing may contact in connection with the Support Services. All Error Notifications must be made by a Designated Contact. Customer may change its Designated Contacts by providing Scale Computing at least 10 days' notice of such change.
 - 8.3.7. *Data.* Customer will be responsible for maintaining backup copies of all data residing in or relying in any way on a Covered Product. Scale Computing will have no responsibility or liability arising out of or related to the loss of any data incurred in connection with the Support Services.
 - 8.3.8. *Temperature, Cooling and Age.* Customer shall maintain proper cooling of the Covered Products. In the event a High Temperature Alert is triggered, Customer will check the physical hardware location and take corrective action as may be necessary to address the any underlying causes, including, without limitation, powering off the affected Covered Products. Additionally, Customer shall promptly notify Scale Computing in the event Customer is unable to ascertain the underlying cause for the High Temperature Alert. In the event Scale Computing determines that Customer has failed to comply with its obligations, Scale Computing may elect (in its sole discretion) to either: (a) provide Software-only support for the remainder of the Support Term (as defined in Section 11.1), and upon such election, Customer will no longer be entitled to receive full support for the Covered Product, or (b) require (as a condition to Scale Computing's obligation to provide any Support Services) that Customer purchase and replace the affected components in the Covered Product in accordance with Scale Computing's written directions.
 - 8.3.9. *Fees.* Customer shall pay the fees for the Support Services as set forth in the Order Form. Except as indicated on the applicable Order Form, payments are non-refundable.
- 8.4. **Abuse of Support Services.** Customer acknowledges that the Support Services are intended to provide support for the Covered Products. Accordingly, in no event will the Support Services include administrative, monitoring, troubleshooting or other duties:
- 8.4.1. Outside of the Covered Product's direct software or hardware platforms or immediate networking environment;
 - 8.4.2. Outside of the provided web interface features, including but not limited to performing accessible configurations such as snapshot scheduling or virtual machine cloning, replication, or exporting; or

- 8.4.3. Involving guest environments on host software, including operating system boot issues, performance issues, viruses, software or hardware customizations, general troubleshooting or server, service, or application installation and configuration.

Scale Computing reserves the right to limit or terminate active Support Packages without refund after one written warning if Scale Computing determines that Customer is utilizing or attempting to utilize Scale Computing support resources to assist with any of the foregoing.

9. **LAPSED SERVICE FEE.** In the event Customer elects to purchase a Support Package for a Covered Product for which Support Services have lapsed, Customer agrees to pay Scale Computing: (a) the maintenance fees set forth on the Order Form for the such Support Package, (b) a lapsed service fee equal to Scale Computing's then-current standard maintenance fee for such Support Package pro-rated for the amount of time Support Services for the Covered Product have lapsed, (c) Scale Computing's then-current catch-up fees, if applicable, and (d) any recertification fees, as applicable.

10. **RELOCATION AND TRANSFER OF COVERED PRODUCTS.** All relocations of a Covered Product must be performed in accordance with Scale Computing's instructions in order to continue receiving full support as indicated in Section 3. In no event will Scale Computing be responsible for, or be obligated to provide hardware replacement support for, damage, failures, Errors or other issues arising out of or resulting from relocation or movement of a Covered Product. Scale Computing may provide Customer with shipping and packaging materials for the relocation of a Covered Product upon request. Scale Support will assist in facilitating pre- and post-move health checks of the Covered Products upon request. A full list of recommendations for a successful physical relocation can be found on the transfer documents.

11. TERM AND TERMINATION.

- 11.1. Support Term. These Terms go into effect on the date Customer agrees to these Terms and continue until terminated, or until Customer no longer maintains an active Support Package for such Covered Product (such period the "**Support Term**"). The Support Term for each Support Package will begin on the date the applicable Covered Product is shipped to Customer unless otherwise specified on the Order Form, and will continue for the purchased duration unless these Terms are terminated.
- 11.2. Full Support Renewal. Except as otherwise specified on an Order Form, Customer may renew the Support Term for Support Packages containing full support for so long as full support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond five (5) years from the original purchase date of the applicable Covered Product.
- 11.3. Software Support Renewal. Except as otherwise specified on an Order Form, Customer may request to renew the Support Term for Support Packages containing full support or Software-only support as Software-only support for so long as Software-only support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond seven years from the original purchase date of the applicable Covered Product. For clarity, any Support Packages renewed pursuant to this Section 11.3 shall contain Software-only support, and Scale Computing shall not be obligated to provide hardware-related support for any Covered Product covered by such renewed Support Package.
- 11.4. Termination. Either Party may terminate these Terms or an affected Support Package in the event the other Party: (a) materially breaches these Terms, and fails to cure such breach within 30 days of being notified thereof; or (b) makes an assignment for the benefit of creditors, become subject to proceedings under bankruptcy or insolvency law, is unable to pay debts as they mature, becomes insolvent, or ceases operating in the normal course of business. Either Party may terminate these Terms upon notice to the other in the event there are no active Support Packages.
- 11.5. Effect of Termination. Upon termination of these Terms, all Support Packages shall terminate as well, and

the rights and obligations of the Parties under these Terms will terminate, except that Sections 1, 11.5, 12, 13, 14.2, 15, and 16 will survive termination of these Terms.

- 12. PROPRIETARY RIGHTS.** Except as explicitly provided herein, Scale Computing retains all right, title, and interest in and to the intellectual property rights in the Support Services, Covered Products and the Software, including, without limitation, any Software Updates, documentation, and all derivative works created therefrom. Customer will not delete or in any manner alter any copyright, trademark, or other proprietary rights notices of Scale Computing appearing on or in the Covered Products, Software, or documentation, and Customer shall reproduce any such notices on all copies it makes of the Covered Products, Software or documentation. To the extent Customer provides feedback to Scale Computing regarding any Covered Product, Software, Support Services, or documentation (“**Feedback**”), Customer agrees that Scale Computing may freely exploit such Feedback without further compensation to Customer.

13. CONFIDENTIALITY.

- 13.1. Definition. As used herein, “**Confidential Information**” means all confidential information disclosed by or otherwise obtained from a Party (“**Disclosing Party**”) to or by the other Party (“**Receiving Party**”), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. “Confidential Information” of a Disclosing Party includes such Disclosing Party’s technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, Scale Computing’s “Confidential Information” includes the Software, documentation, and all Scale Computing product technical information, as well as technical information generated by Covered Products about the operation or performance of Covered Products. “Confidential Information” does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.
- 13.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, the Receiving Party is permitted to disclose Confidential Information of the Disclosing Party on a need-to-know basis to employees, contractors, and agents of its Affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. “**Affiliate**” means any corporation, partnership, joint venture, or other entity: (a) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (b) if a partnership, as to which a Party or another Affiliate is a general partner; or (c) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations.

14. WARRANTIES AND DISCLAIMER

- 14.1. Limited Warranty. Scale Computing warrants to Customer that it will perform the Support Services in a professional and workmanlike manner. Scale Computing will use reasonable efforts to reperform any Support Services to correct or circumvent any nonconformities in the Support Services identified by

Customer within the 30-day period following the date of performance of such Support Services. This Section 14.1 states Scale Computing's sole and exclusive liability, and Customer's sole and exclusive remedy for breach of this warranty.

- 14.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION, SCALE COMPUTING MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SCALE COMPUTING EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. SCALE COMPUTING DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE. SCALE COMPUTING DOES NOT WARRANT THAT THE SOFTWARE, OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, FULLY AVAILABLE OR UNINTERRUPTED. SCALE COMPUTING DOES NOT WARRANT THAT ANY INFORMATION PROVIDED ON, IN OR THROUGH THE SOFTWARE OR THE DOCUMENTATION IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. SCALE COMPUTING EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SOFTWARE, OR THE DOCUMENTATION. SCALE COMPUTING DOES NOT WARRANT AGAINST LOSS OF DATA.

15. LIMITATIONS OF LIABILITY

- 15.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, SCALE COMPUTING WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THESE TERMS, EVEN IF SCALE COMPUTING IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SOFTWARE.
- 15.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING'S (OR ITS SUPPLIERS) TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER FOR THE ACTIVE SUPPORT PACKAGE FOR WHICH CLAIMED DAMAGES AROSE.
- 15.3. Independent Allocations of Risk. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SCALE COMPUTING TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN SECTION 15 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS.

16. GENERAL

- 16.1. Relationship. The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

- 16.2. Use of Brand Name. Scale Computing and its Affiliates may use the name, brand, or logo of Customer (and Customer's parent company) (the "**Customer Marks**") solely for the purpose of identifying Customer as a licensee or customer of Scale Computing and its Affiliates in a 'customer' section of their websites, brochures, or other promotional materials, or as part of a list of their customers in a press release or other public relations materials. Any such limited use shall include proper attribution to Customer or its parent company of any trademark or logo of Customer or its parent company, and shall in no way suggest that Scale Computing and its Affiliates are affiliated with, or speaking on behalf of, Customer or Customer's parent company. Any other press releases or marketing materials referring to the Customer Marks shall require mutual approval in writing prior to public dissemination thereof. Without limiting the foregoing, Customer may object to use of the Customer Marks by providing written notice to Scale Computing specifying the objectionable uses, and Scale Computing and its Affiliates will use reasonable efforts to promptly cease the identified uses following receipt of such notice.
- 16.3. Assignability. Customer shall not assign or otherwise transfer its rights under these Terms without the prior written consent of Scale Computing. Any attempt to make such an assignment without Scale Computing's consent shall be void. Scale Computing may freely assign these Terms.
- 16.4. U.S. Government Restricted Rights. The Software is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Software and corresponding documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.
- 16.5. Notices. All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, to the appropriate Party at the address set forth in Customer's order for Scale Computing Platform software and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 16.5. Notices to Scale Computing shall be sent to: Scale Computing, Inc, 525 S. Meridian - Suite 3E, Indianapolis, IN 46225. Email for legal notices: legalnotices@scalecomputing.com.
- 16.6. Force Majeure. Neither Party will be liable to the other Party for any delay or failure to perform as required by these Terms as a result of any cause or condition beyond its reasonable control, including, without limitation, Acts of God, accident, death, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.
- 16.7. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties hereby irrevocably consent to the personal jurisdiction and venue of the federal, state, and local courts in New Castle County, Delaware in connection with any action arising out of or in connection with these Terms. Notwithstanding the foregoing, at either Party's option, any dispute or claim arising out of or related to these Terms may be finally settled by confidential binding arbitration in Wilmington, Delaware before one arbitrator, administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Customer will use the Software and corresponding documentation in compliance with all applicable laws and regulations.
- 16.8. Waiver. Waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either Party to enforce any provisions of these Terms shall not be deemed a waiver of future enforcement of that or any other provision.
- 16.9. Severability. If a court or arbitrator of competent jurisdiction holds any term of these Terms invalid or unenforceable, such term will be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed

and the remaining terms of these Terms will be interpreted in such ways as to give maximum validity and enforceability to these Terms. If any material limitation or restriction on the use of the Software under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Software will immediately terminate.

- 16.10. Entire Agreement. These Terms, including all exhibits, constitutes the entire agreement between these Parties and supersedes, and the terms of these Terms govern, all prior and contemporaneous oral and written communications regarding this transaction, except that these Terms do not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to these Terms being executed, nor do they affect the validity of any agreements between the Parties relating to products or services of Scale Computing other than the Software. No employee, agent, or other representative of Scale Computing has any authority to bind Scale Computing with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of these Terms. These Terms may not be altered, modified, or amended except by written amendment duly executed by authorized representatives of each Party hereto. Scale Computing will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to these Terms (whether or not it would materially alter these Terms) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, purchase order, or otherwise, unless Scale Computing specifically provides a written acceptance of such provision signed by an authorized representative of Scale Computing. Scale Computing may update these Terms from time to time and any updates will be binding at time of Customer's next renewal of the Software. Customer will periodically check for updates to these Terms, including prior to any renewal.

EXHIBIT A

Severity Levels

Scale Computing will assign a Severity Level for each technical problem based on Customer's description of the problem(s) and their impact on overall data accessibility. The Initial Response Time Objective is defined as Scale Computing providing some form of verbal or written contact with Customer to respond to and/or identify the issue or concern as Scale Computing understands it at that time. Scale Computing will use commercially reasonable efforts to meet the objectives below.

Severity	Definition	Service Objective	Initial Response Time Objective
1 (Critical)	A critical problem requiring immediate resolution. Problem may cause loss of data and/or restrict production data availability.	Resources applied continuously until a solution or acceptable workaround is found.	2 hours
2 (Major)	A serious problem that affects major functionality. Operation continues in a restricted fashion and there may be restricted access to production data.	Resources applied on a priority basis during normal business hours (8AM–8PM ET Monday through Friday), until a solution or workaround is found.	2 hours
3 (Minor)	A problem that minimally affects, if at all, functionality operations or for which an acceptable workaround exists.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found	2 hours
4 (Minor Enhancements)	A minor condition or request that has no significant effect on the Customer operations.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found	1 business day

Scale Computing: End User Software License Agreement (EULA)

1. Binding Agreement

This Software License Agreement (“Agreement” or “EULA”) is a legal agreement between Scale Computing, Inc., a Delaware corporation with an office at 525 S. Meridian – Suite 3E, Indianapolis, IN 46225 (“Scale”) and the person or entity entering into these terms (“you” or “Licensee”). If you are entering into this Agreement on behalf of a company or other legal entity, then you represent that you have the authority to commit such entity to this Agreement, and the term “you” shall hereafter refer to such entity.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. BY CLICKING “I ACCEPT”, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS EULA, THEN DO NOT INSTALL, COPY OR USE THE SOFTWARE.

2. Definitions

2.1. “HC3” means Scale’s HC3 virtualization software.

2.2. “Licensee Computer” means the Scale computer hardware equipment and operating systems, which Scale has provided to Licensee or which Licensee has procured to operate the Software .

2.3. “Open Source Software” means any software, operating system, programming language, device, or program licensed under the terms of an open source license.

2.4. “Order Form” means the order form, agreement or other ordering document between Licensee and Scale (or its authorized reseller) pursuant to which Licensee purchased the right to use the Software from Scale or its authorized reseller.

2.5. “Shipment Date” means the date of shipment of product or licenses, physical or virtual by Scale or its authorized reseller.

2.6. “Software” means the object code for the computer programs and computer coded instructions, the specific Scale program modules, feature set(s) or feature(s), including all related specifications, documentation, technical information, and all Upgrades (defined in Section 3.3) to any of the foregoing, in each case provided by or made available by Scale (or its authorized resellers) to Licensee. Software shall include HC3, add-on components, web services or supplements that Scale may provide or make available to Licensee, whether directly or via Scale’s authorized resellers, after the date Licensee obtains the initial copy of the Software (“Add-Ons”). For clarity, such Add-Ons may be subject to additional terms and conditions, which shall control in the event of any conflict between the terms of this Agreement and such additional terms and conditions, but only with respect to such Add-Ons.

3. License

3.1. License Grant

3.1.1. Upon Licensee’s full payment of the required license fees (as specified in the Order Form), Scale hereby grants to Licensee, and Licensee hereby accepts, a limited, nonexclusive, nontransferable, non-sublicensable license to: (i) install the number of licensed units of the Software onto equipment authorized by Scale, if and as indicated in the Order Form, and (ii) use the Software solely as embedded in, for execution on, or (where the applicable documentation permits installation on equipment not authorized by Scale) for communication with, Scale-authorized equipment owned or leased by Licensee in accordance with the applicable documentation, in each case subject to the terms and conditions set forth herein. Licensee’s use of the Software shall be limited to use on the specified number of chassis or central processing units specified on the Order Form (or if unspecified, then a single chassis and central processing unit).

3.2. General Restrictions

Except and solely to the extent such restriction is impermissible under applicable law, and other than as expressly set forth in this Agreement, Licensee will not, and will not assist or permit any third party to: (a) disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code of the Software or any component thereof, (b) copy, reproduce, modify, alter or otherwise create any derivative works of the Software or any component thereof, (c) sell, lease, sublicense or otherwise transfer the Software to any third party, (d) use the Software to violate, misappropriate, or infringe the rights of any third party, (e) interfere with or circumvent any feature of the Software, including any security or access control mechanisms, (f) use the Software in any way that is not in accordance with the applicable documentation (including, for clarity, by installing or using the Software on any hardware that is not approved by Scale for use with the Software) or that violates applicable law, or (g) attempt to do any of the foregoing.

3.3. Upgrades and Additional Copies

Any upgrades, updates, bug fixes or modified versions (collectively, "Upgrades") or backup copies of the Software licensed or provided to Licensee by Scale or an authorized reseller shall be deemed to be Software, provided that Licensee has paid the fees, if any, for such copies or Upgrades. Notwithstanding the foregoing, Licensee may not use any additional copies of the Software provided by Scale or its authorized reseller other than for backup purposes only. Licensee may create a reasonable number of copies of any documentation or materials related to the Software solely for use in connection with Licensee's authorized use of the Software, provided, however, that Licensee shall promptly destroy all such copies upon termination of this Agreement.

3.4. Responsibility of Licensee

Licensee acknowledges that the Software incorporates or is based in part upon proprietary information of Scale and its third party licensors. Licensee shall not disclose or make available the Software, documentation, or any information or data embodied therein, to any person or entity other than employees of Licensee who have a need to know and that are bound by non-disclosure and non-use obligations at least as restrictive as those provided in this Section. Such employees shall be required to use the Software and documentation solely for the purposes set forth in this Agreement and shall not disclose or make available the Software, documentation, or any information or data embodied therein, to any person or entity other than those permitted by this Agreement. In all events the Licensee shall use at minimum the same care to maintain the confidentiality of the Scale proprietary information that it uses to maintain the confidentiality of its own information of equal importance.

3.5. Ownership

As between Scale and Licensee, Scale retains all right, title and interest in and to the Software, including any modifications, derivatives, and copies thereof, and any related documentations or materials, whether or not made by Scale. Scale reserves all rights in and to the foregoing, and except as expressly granted in this Agreement, Licensee receives no rights or licenses hereunder.

3.6. Maintenance and Support Services

Scale may provide Licensee with maintenance and support services related to the Software ("Support Services"). Such Support Services shall be provided pursuant to Scale's then-current standard terms for such Support Services. Unless otherwise indicated by Scale, all supplemental software code or documentation provided to Licensee as part of the Support Services, if any, will be deemed to be Software hereunder and use of such code or documentation be subject to the terms and conditions of this Agreement.

3.7 HC3 Platform

If Customer's subscription to HC3 includes the right to access Scale's online HC3 management platform, such access is provided under the HC3 Platform Terms available at <https://community.scalecomputing.com/s/article/Scale-Computing-HC3-Platform-Terms>. Licensee's rights to use the HC3 management platform does not extend beyond Customer's subscription to HC3.

3.8. Licensee Records

Licensee grants to Scale and its independent accountants the right to examine Licensee's books, records and accounts during Licensee's normal business hours to verify compliance with this Agreement. In the event the results of such audit reveals that Licensee has failed to comply with the terms of this Agreement, Licensee shall promptly reimburse Scale for its reasonably incurred costs of conducting such audit, and Scale may terminate this Agreement immediately upon notice to Licensee. In the event that such failure includes Licensee's use of the Software that exceeds the scope of the rights granted hereunder, Licensee shall promptly pay to Scale the appropriate license fees for such excess use at Scale's then-current rates plus interest at the highest rate allowed under applicable law calculated from the date such non-compliance began. The terms of this Section shall survive any termination or expiration of this Agreement.

3.9. Limited Warranty by Scale

3.9.1. Scale warrants to Licensee that for a period of thirty (30) days commencing from the Shipment Date ("Warranty Period") (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications.

3.9.2 Licensee's sole and exclusive remedy and Scales sole and exclusive liability arising out of or related to a breach of warranty shall be limited, at Scale's election, to: (i) repair of the defective media or Software, (ii) replacement of the defective media or Software, or (iii) refund of the license fees actually paid by Licensee and received by Scale for the affected Software, in each case if reported to Scale (and, if requested by Scale, returned and received by Scale) within the Warranty Period. For the avoidance of doubt, Licensee shall remain responsible for its own costs in connection with receipt of such remedies, including, by way of example, the cost of shipping the hardware on which the Software is installed to Scale for Scale.

3.9.3. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 3.9.1 ABOVE, THE SOFTWARE AND ANY DOCUMENTATION OR OTHER RELATED MATERIALS ARE PROVIDED 'AS IS' AND 'AS AVAILABLE'. SCALE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE, DOCUMENTATION AND RELATED MATERIALS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT OR ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. SCALE DOES NOT WARRANT THAT THE SOFTWARE, DOCUMENTATION OR ANY RELATED MATERIALS OR ANY PORTION THEREOF WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND SCALE DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED, AND SCALE DOES NOT WARRANT THAT THE FUNCTIONS OR FEATURES CONTAINED WITHIN THE SOFTWARE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT ALL DEFECTS THAT MAY EXIST IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE WITH ANY SOFTWARE OR HARDWARE POSSESSED BY LICENSEE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SOFTWARE OR SCALE WILL CREATE ANY WARRANTY REGARDING THE SOFTWARE THAT IS NOT EXPRESSLY STATED IN THIS AGREEMENT. SCALE IS NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM LICENSEE'S DOWNLOADING, INSTALLATION, OR USE OF THE SERVICE. LICENSEE UNDERSTANDS AND AGREES THAT LICENSEE USES ANY PORTION OF THE SOFTWARE AT ITS OWN DISCRETION AND RISK, AND THAT SCALE IS NOT RESPONSIBLE FOR ANY DAMAGE TO LICENSEE'S PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR OTHER DEVICES USED IN CONNECTION WITH THE SOFTWARE) OR FOR ANY LOSS OF DATA.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 3.9.3 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SCALE DOES NOT DISCLAIM ANY WARRANTY THAT SCALE IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

3.9.4. Licensee agrees that the Software is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). Licensee acknowledges that the Licensee's right to use the Software does not extend to use in connection with High Risk Activities, and Licensee hereby agrees to indemnify Scale from any and all liabilities, losses, harm or other costs (including reasonable attorney's fees) incurred by Scale resulting from Licensee's use of the Software in connection with High Risk Activities.

3.10. Limitations

Scale shall have no liability or obligation with regard to Scale's breach of any warranty hereunder in the event the Software or any related product or equipment supplied by Scale: (a) has been altered, except by Scale, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Scale, (c) has been subjected to abnormal physical or electrical stress, misuse negligence, virus or accident, or (d) is licensed for beta, trial, evaluation or demonstration basis for which Scale does not receive a payment or license fee.

3.11. LIMITATION ON LIABILITY

3.10.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SCALE OR ITS RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION OR LOSS OF USE, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE HARDWARE ON WHICH IT IS INSTALLED, EVEN IF SCALE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SCALE NOR ITS RESELLERS' LIABILITY ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SCALE IN EXCHANGE FOR THE LICENSE GRANTED TO LICENSEE HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. WITHOUT LIMITING THE FOREGOING, NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY LICENSEE MORE THAN ONE (1) YEAR FROM THE DATE SUCH CAUSE OF ACTION AROSE.

3.12 Additional Functionality

Licensee acknowledges that the Software may contain the capability to self-report back to Scale any issues with the Software, the Licensee Computer and other relevant metrics ("Reported Data"). Licensee agrees that it shall not

interfere with the capability of the Software to collect Reported Data and transmit such Reported Data to Scale. In addition, Licensee acknowledges that in the event such capability is disabled or otherwise unavailable, Licensee may lose the ability to use certain features or functionality of the Software.

3.13. License Limitations

The availability of certain features depends on the type of license you purchase. Some features may not be enabled or supported for certain license types. Information regarding the availability of features by license type is available at the following support matrix: <https://community.scalecomputing.com/s/article/Scale-Computing-Software-Support-Matrix>. The version of the matrix that is in effect at the time of your purchase will govern the features available to you.

4. Third Party Software

The Software may include, or may be distributed on the same media or in the same download with third-party software, including Open Source Software ("Third Party Technology"). Use of such Third Party Technology may be governed by separate copyright notices and license provisions, including those listed at <https://www.scalecomputing.com/support/open-sources-licensing-agreements/>.

5. Indemnification

To the fullest extent permitted by law, Licensee will indemnify Scale and its affiliates from and against any claim, demand, action, proceeding, loss, liability, cost and expense (including court costs and reasonable fees of attorneys, accountants and other professionals) incurred or suffered by Scale and its affiliates arising out of or related to: (i) Licensee's unauthorized use of the Software or (ii) Licensee's breach of the terms of this Agreement. Scale reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by Licensee (without limiting Licensee's obligations with respect to such matter), and in that case, Licensee agrees to reasonably assist Scale in connection with the defense of such matter.

6. Term and Termination

6.1. Term

This Agreement is effective beginning upon Licensee's acceptance of this Agreement or when Licensee first downloads, installs or uses the Software, and, unless terminated earlier in accordance with its terms, shall continue for the subscription period indicated on the Order Form, or, if none is indicated, until terminated as specified herein. Licensee's rights under this Agreement will terminate immediately without notice from Scale if Licensee fails to comply with any provision of this Agreement.

6.2. Termination by Scale

Scale will have the right to terminate this Agreement immediately upon notice if (a) Licensee breaches any term of this Agreement, or (b) Licensee becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

6.3. Termination by Licensee

Licensee may terminate this Agreement: (i) at any time by destroying all copies of the Software including any documentation and other related materials, or (ii) in the event Scale breaches or fails to perform any other material term or condition of this Agreement and fails to remedy any such breach within thirty (30) days of receiving notice thereof from Licensee, by providing notice to Scale.

6.4. Effect of Termination of Agreement

Upon termination or expiration of this Agreement, Licensee shall immediately cease all use of the Software, the documentation or related materials, and return to Scale or (at Scale's request) destroy all copies of the Software, documentation or related materials, and will certify to Scale in a writing signed by Licensee (or, if Licensee is an entity, an officer of Licensee) that Licensee has returned or destroyed all such copies. All obligations relating to nonuse and nondisclosure of confidential information, indemnification, and the obligations of Licensee to respect Scale's intellectual property rights shall survive termination or expiration of this Agreement for any reason. Licensee further agrees that in the event of such termination or expiration, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable. Scale's obligations under this Agreement shall cease upon termination or expiration thereof.

7. Miscellaneous

7.1. Restricted Rights

7.1.1. All Software and any accompanying documentation or related materials is deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement, and shall be prohibited except to the extent expressly permitted hereunder.

7.2. Export Restrictions

Licensee acknowledges that the Software, documentation, or any related materials may be subject to export control laws and regulations, and that each of Scale and Licensee is responsible for their own compliance with such laws and regulations. This requirement shall survive expiration or termination of this Agreement.

7.3. Notices

All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by registered or certified mail, return receipt requested, to the official address of the other party or to such other place as the parties hereto from time to time may direct.

7.4. Relationship of Parties

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

7.5. Force Majeure

Neither party hereto will be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control including, without limitation, Acts of God, accident, death, injury or illness of key personnel, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

7.6. Assignment

Licensee shall not assign or otherwise transfer its rights under this Agreement, including the Software obtained pursuant to this Agreement, without the prior written consent of Scale. Any attempt to make such an assignment without Scale's consent shall be void. Scale may freely assign this Agreement.

7.7. No Waiver

Waiver of any right or remedy under this Agreement or by law is only effective only if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either party to enforce any provisions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

7.8. Choice of Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, USA, without giving effect to principles of conflict of laws, without regard to the United Nations Convention on the International Sale of Goods. The parties hereby irrevocably consent to the personal jurisdiction and venue of the state courts sitting in New Castle County or the federal courts located in the District of Delaware.

7.9. Attorneys' Fees

If any legal action or other legal proceedings is brought for the enforcement of this Agreement, or if a dispute arises under this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

7.10. Severability

If a court of competent jurisdiction holds any term of this Agreement invalid or unenforceable, such term will be reduced or otherwise modified by such court to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed and the remaining terms of this Agreement will be interpreted in such ways as to give maximum validity and enforceability to this Agreement.

7.11. Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes and all prior and contemporaneous written and oral communications regarding this transaction, and may not be altered, modified, or amended except by a written amendment duly executed by authorized representatives of each party hereto.

7.13 Language

The English language shall govern the meaning and interpretation of this Agreement.

SCHNEIDER ELECTRIC

**Sales and Service Terms and Conditions
Factory Warranty**



SALES AND SERVICE TERMS AND CONDITIONS

Unless you the "Customer" have a valid agreement with APC Sales and Service Corporation (APC) which has precedence over this document, the following terms and conditions, including any documents incorporated by reference herein, shall govern all Products and Services delivered by APC.

DEFINITIONS ARTICLE 1

1.1.1 Certain Definitions.

- A. "Affiliate" means any entity controlling, controlled by or under common control with either party. "Control" shall mean or indirect the direct ownership of more than fifty per cent (50%) of the voting rights or income interest in a company or other business entity or such other relationship as, in fact, constitutes actual control.
- B. "Change" means any alteration or any extra work, delay or other circumstance which results in an adjustment to any of the cost, delivery schedule, and/or any other aspect of the Product or Services.
- C. "Cost" means the charges, prices, and fees for the Product and Services.
- D. "Commissioning" means on site Start-up and testing of the Products, in accordance with APC's standards.
- E. "Documentation" means the APC user guides, operating manuals, education materials, reports generated by the APC Configurator, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Products or used in conjunction with the Services, whether made available in print, magnetic, electronic, or video format, in effect as of the date (i) the applicable Product is shipped to Customer, or (ii) the applicable Service is provided to Customer.
- F. "Entitlement or Entitlements" means the document that memorializes the scope of the Services.
- G. "End User" means the third party, final user of the Product or Service.
- H. "Equipment" means any and all third party sourced finished goods including spare parts relating thereto. Equipment does not include any APC branded products.
- I. "Products" means (individually or collectively as appropriate) such APC hardware, Software, Documentation, supplies, accessories, and other commodities, that have been provided or will be provided by APC pursuant to this AGREEMENT. "Products" does not include Equipment.
- J. "Purchase Order" means a written or electronic order from Customer for the purchase of Products, Equipment or Services.
- K. "Quotation" means the applicable authorized APC quotation in effect when APC accepts Customer's order.
- L. "Services" means the Start-up, Commissioning, repair, and/or maintenance activities provided by APC.
- M. "Statement of Work or SOW" means the document used by APC to describe customized Services. A SOW may (i) describe the attributes of the customized Services to be provided, and APC's and Customer's responsibilities relating to such Services; (ii) specify the price for such Services; and (iii) include technical and administrative requirements associated with such Services.
- N. "Software" means computer programs and program objects of any kind (including source code and object code), program set-up and customization parameters, tools, and data and the tangible media on which any of the foregoing are recorded (and copies thereof), including middleware and firmware and related updates and upgrades.
- O. "Specifications" means APC's published specifications for the Products or Services.
- P. "Start-up" means installation of the Product at the End User's site and verification by APC that the Product is in substantial conformance with the Specifications.

Q. "Substantial Completion" means the point in time at which the Products have been installed such that Commissioning and Start-up of the Products may thereafter commence, as further defined herein.

R. "Trademarks" means all applicable trademarks, and service marks legally registered to and claimed or used by APC and its Affiliates.

S. "Vendor" means the manufacturer of Equipment.

T. "Version" or "Release" means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by APC to its customers.

ARTICLE 2. PURCHASE ORDERS

2.1 All Purchase Orders are subject to acceptance by APC. These terms and conditions supersede and replace in their entirety any and all terms and conditions set forth on the face or reverse side of any Purchase Order or other document presented by Customer, except for the specific terms of the Purchase Order setting forth the price, quantity, and delivery location, unless different terms are mutually agreed to between the parties. All Purchase Orders placed with APC for Service(s) shall be subject to availability and Customer's favorable credit status with APC.

2.2 Customer may request a Change to a Product order provided that the request for Change is delivered to APC at least thirty days (30) prior to the scheduled shipping date. Customer shall pay to APC all reasonable costs associated with the Change.

2.3 Customer may cancel a Product order provided that such cancellation is delivered in writing to APC at least thirty days (30) prior to the scheduled shipping date. In the event of any cancellation Customer shall pay to APC a restocking fee equal to 25% of the Product order plus costs incurred by APC for manufactured goods, and 100% for Equipment ordered by APC pursuant to the Purchase Order being cancelled.

ARTICLE 3. PROVISION OF PRODUCTS AND SERVICES

3.1 Transportation of Products. All shipments from APC will be made EXW (Ex Works) as per Incoterms 2000. Customer shall reimburse APC for all costs associated with positioning the Products and Equipment at the Customer's site. Shipment dates shall be estimated after APC receives and approves the applicable Purchase Order.

3.2 Title and Risk of Loss. Title and risk of loss pass to Customer at APC's shipping dock in accordance with the shipping terms set forth in Section 3.1 above.

3.3 Installation of Products. If installation is provided for, APC shall install the Product in good working order at the designated location in accordance with the standards agreed to between the parties. APC shall not be liable for any differing, subsurface, latent or concealed conditions encountered in the performance of any Services. The existence of such differing, subsurface, latent or concealed conditions shall constitute a Change.

3.4 Site Preparation. Any specific environmental conditions which are required for the provision of the Services shall be the responsibility of Customer unless otherwise agreed to in writing by APC. APC shall be entitled to rely on the sufficiency and accuracy of any documentation or data, whether written or oral, provided by Customer to APC regarding site conditions and site preparation requirements.

3.5 Health and Safety. If the Customer is subject to health and safety laws or regulations which are more stringent than the health and safety standards governing APC, or if Customer elects to operate under more stringent health and safety standards than those to which APC is subject, and Customer requires APC to comply with those higher standards, APC shall be entitled to charge the Customer any extra costs incurred in so complying. Furthermore, APC may refuse, without any liability to Customer whatsoever, to perform in whole or in part the Services if the site presents unhealthy or unsafe conditions.

3.6 Relocation. If Customer relocates any of the Products which are subject to the terms of a Entitlement without APC agreeing to perform maintenance work as provided under that Entitlement at the new site, APC shall have the right, without any liability to Customer, to terminate the portion of the Entitlement that relates to the new site without any liability to Customer. Any such termination shall not relieve Customer of any maintenance fees to be paid or invoices due under the Entitlement.

3.7 Information. Information and/or notices given by APC to the Customer shall be deemed to be correctly given if provided to employees or representatives of the Customer. APC shall have reasonable access to the sites and the Products.

3.8 Site Access. APC shall have reasonable access to the sites and the Products. APC will be entitled to charge the Customer at its normal rates for the time lost by APC's employees as a result of delays from the Customer in granting

access to the site. Furthermore, APC will not be required to perform any Service beyond the term of the Entitlement or Entitlement if Customer does not provide reasonable and timely site access.

3.9 Third Party Providers. If a party other than APC services the Products and if in APC's reasonable opinion, corrective action is required to return the affected Products to their normal operating condition, APC will offer to perform such work at the service rates and spare part prices in force at the time of the offer. APC will not be obliged to perform maintenance work until all remedial work has been done.

3.10 Regulatory Requirements. When required by national regulations or safety rules, an employee or representative of the Customer shall be present in the room where the maintenance work takes place. If no employee or representative of the Customer is present, APC shall have the right to stop its work and to invoice the Customer at its normal labor rate.

3.11 By-Pass Switch. If no installation by-pass switch has been installed by Customer prior to the performance of any Service, it may be necessary to power down all equipment which depends on electricity from the circuit on which work is being performed. Customer must make time available during regular business hours for the shut down to take place and for the services to be performed. Customer is reminded that where there is an installation by-pass switch and it is engaged, or where the product is inoperative, the product does not provide any protection against interruptions or irregularities in, or loss of, electrical power.

3.12 Replacement Parts. If an APC authorized engineer installs a replacement part, the removed part becomes property of APC as soon as it is detached from the Customer product. APC authorized engineers are authorized to install only replacement parts specified by APC. APC will take possession of defective parts (excluding batteries) for which it has provided replacements and will properly dispose of them at no additional cost to Customer.

ARTICLE 4. PAYMENT

4.1 Payment. Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of APC's invoice date. Payment by Customer shall not be contingent upon payment by a third party. If APC places Customer's account in the hands of an agency or a law firm for collection by legal action, Customer will pay an additional charge equal to the costs of collection including agency and attorneys' fees and court costs incurred to the extent permitted by laws governing these transactions. In case any invoice is not paid when due, APC shall be entitled to discontinue any maintenance works with fifteen (15) days' prior notice. Discontinuation of Services does not relieve the Customer of its obligation to pay for the Services previously rendered and to pay the yearly fee in whole for the current year.

4.2 Prices for Services, Additional Services, Contract Renewal and Multi-year Contracts. If the term of a service Entitlement is for more than one year, yearly invoices will be issued by APC at each anniversary date and shall be paid by the Customer in accordance with the payment terms below. Pricing may be adjusted each year at the anniversary date of an Entitlement. Payment for any additional work not quoted by APC which goes beyond the scope of this Agreement which is approved by Customer will be paid within ten (10) days of the date of the invoice unless otherwise stated on the invoice.

4.3 Taxes. Unless Customer provides acceptable evidence of exemption, Customer shall pay or reimburse APC for all taxes which are imposed upon Customer's acquisition of Products or Services. Customer shall not be obligated to pay or reimburse APC for any taxes attributable to the sale of any Products or Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by APC.

ARTICLE 5. WARRANTIES

5.1 Limited Hardware Warranty. APC warrants that the APC hardware Products delivered to Customer will be free from defects in workmanship and materials under normal use for the length of time outlined in the hardware Product manual for the relevant hardware Product, current as of the date on which the Product is ordered.

5.2 Limited Software Warranty. APC warrants that during the Software Warranty Period (i) the Software licensed hereunder will perform in substantial conformance to the program specifications; and (ii) the magnetic media on which the Software is furnished will be free from defects in material and workmanship when given normal, proper and intended usage. The warranty period applicable to the Software is sixty (60) days ("Software Warranty Period"). The Software Warranty Period commences on the date of shipment of such Software by APC. No Software updates are provided under this Agreement. Licensor does not warrant that the operation of the Software will be uninterrupted or error-free, or that Software will operate in hardware and software combinations other than as expressly provided for in the Product Specifications or that Software will meet requirements specified by Customer.

5.3 Equipment Warranties. No warranty is made with respect to Equipment, and no recommendation of such Equipment shall imply or constitute any warranty with respect thereto. Warranties associated with Equipment are passed "as is" from the applicable vendors, and any enforcement of such Equipment warranties shall be between Customer and Vendor.

5.4 **Service Warranties.** APC warrants that the Services to be performed hereunder shall be performed in accordance with recognized professional standards customary in the industry in which the Services are being performed. Should the Services fail to comply with such standards, APC agrees to re-perform such deficient Services at no cost to Customer provided that APC has received written notification within thirty (30) days following the completion of the specific Services giving rise to the claim. FURTHERMORE, CUSTOMER AGREES TO HOLD APC HARMLESS FROM ANY DAMAGES THAT ARISE FROM SERVICES PERFORMED IN STRICT ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS OR DIRECTIONS WHICH ARE CONTRARY TO THE APC'S STANDARD PRACTICES.

5.5 **Exclusive Warranties.** THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. APC'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES.

5.6 **Exclusions.** APC shall not warrant, nor is APC required to provide, any Service on any Product defects (i) resulting from (a) the Product being modified by any person other than APC, (b) incorrect use of the Product (c) unsuitable environmental conditions, or (d) causes not attributable to the Product; or (ii) which were not apparent at the time of the Service visit. APC will submit to the Customer an estimate of the additional repair work required to correct any such defects. Said estimate will be based on APC labour and spare parts price list in force when the estimate is issued. APC will not perform any additional Services without having obtained the Customer's written approval. The opinion of APC as to whether or not the work is additional maintenance work and therefore not covered under an Entitlement shall be conclusive. Furthermore, APC is not responsible for any software, firmware, information or memory data of Customer or End Users contained in, stored on, or integrated with any Products returned to APC for repair, whether under warranty or not. APC also makes no warranty or representation that its Software will work in combination with any hardware or applications software products provided by third parties, that the operation of the Software will be uninterrupted or error-free, or that all defects in the Software will be corrected.

ARTICLE 6. TERM

6.1 **Termination for Non-Payment.** APC may terminate any Entitlement, or any portion thereof, if Customer fails to pay when due any amounts due pursuant to any Purchase Order and such failure continues for a period of thirty (30) days after written notice is given to Customer.

6.2 **Immediate Termination.** APC may terminate a Service obligation immediately if Customer engages a third party to perform emergency or corrective maintenance on equipment which is covered by an Entitlement. In the event of said termination all obligations hereunder shall be terminated and APC shall have no liability for the termination or any damages caused as a result of the third party's actions or inaction.

6.3 **Termination of Entitlements.** Entitlements are non-cancellable by Customer.

ARTICLE 7. LIABILITIES

7.1 **Limitation of Liability.** APC'S MAXIMUM LIABILITY TO CUSTOMER FOR DIRECT DAMAGES WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCT OR SERVICES WHICH IS THE SUBJECT OF THE CLAIM. THE FOREGOING LIMITATION WILL NOT REDUCE APC'S OBLIGATIONS UNDER THE INTELLECTUAL PROPERTY INDEMNIFICATION SECTION OF THIS AGREEMENT, OR APC'S LIABILITY FOR BODILY INJURY CAUSED BY APC'S NEGLIGENCE. **NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY, OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

7.2 **Applicability of Limitations of Liability.** The limitation of liability in Section 7.1 shall apply to the full extent permitted by law, and shall apply whether liability is grounded in contract, tort, or otherwise, and shall extend to each party and their respective Affiliates, directors, officers, and employees.

ARTICLE 8. SUBSTANTIAL COMPLETION

- 8.1 Substantial Completion. When Installation is included in the Services, APC shall provide written notice to Customer when APC deems such installation to be Substantially Complete and ready for Commissioning and Start-up. Within five (5) days after receiving notice of Substantial Completion, Customer shall advise APC in writing of any known defects or deficiencies in the Services. Upon receipt of such notice Company shall then take appropriate corrective action. The installation shall be deemed to have achieved Substantial Completion should Customer fail to reply to APC's written notice within said five (5) day time period.

ARTICLE 9. ACCEPTANCE

- 9.1 All Products delivered pursuant to this Agreement will be deemed accepted upon delivery.

ARTICLE 10. INTELLECTUAL PROPERTY INFRINGEMENT

- 10.1 Third-Party Claims. APC will defend or settle any claim against Customer alleging that a Product provided under these terms and conditions infringes a third party's U.S. intellectual property right, if Customer:

1. promptly notifies APC of the claim in writing;
2. cooperates with APC in the defense of the claim; and
3. grants APC sole control of the defense or settlement of the claim.

APC will pay infringement claim defense costs, APC negotiated settlement amounts, and court-awarded damages with respect to any such claim.

- 10.2. Remedies. If such a claim appears likely, then APC may modify the APC Products or Services, procure any necessary license, or replace the affected Product with one that is functionally equivalent. If APC determines that none of these alternatives is reasonably available, then APC will issue Customer a refund equal to the depreciated value of the affected Product.

- 10.3. Exclusions. APC has no obligation for any claim of infringement arising from:

1. APC compliance with Customer or third party designs, specifications, instructions, or technical information;
2. modifications made by Customer or a third party;
3. Customer non-compliance with the Documentation; or
4. Customer use with non-APC products, software, or services.

11. LICENSE AND RESTRICTIONS

- 11.1 Software License Grant. Subject to these terms and conditions and the payment of all applicable license fees, APC grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable license to "Use", in object code form, the Version or Release of the APC Software delivered pursuant to this Agreement. For purposes of this Agreement, "Use" means to install, store, load, execute, and/or display one copy of the Software on one device at a time for Customer's internal business purposes, or the act of Using per this definition. Customer's Use of such Software is subject to these license terms and the Use restrictions and authorizations for the Software specified herein or as otherwise made available to Customer with the Software (the "Software License"). Additional Software License terms are contained in Exhibit A, and are hereby incorporated by reference.

- 11.2 Trademarks. Neither Customer nor its Affiliates have any right to incorporate any Trademark into Customer's or Affiliate's company name or trade name. Neither Customer nor its Affiliates will alter, cover, obfuscate or remove any Trademarks placed by APC on the Products or any material contained therein.

12. MISCELLANEOUS

- 12.1 Relationship of Parties. APC is performing only as an independent contractor. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between APC and Customer.

- 12.2 Intellectual Property Rights. Customer shall not have or obtain title to any tangible or intangible property or materials which APC may supply, and all such items may be used only for the performance of the Services.

- 12.3 Confidentiality. Each party acknowledges that in the course of performance of its obligations such party may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: information

relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of this Agreement; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Each party agrees that, for a period of two (2) years following its receipt of Confidential Information from the other party, whether before or after the effective date of this Agreement, such recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of this Agreement, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an Affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the Party owning the Confidential Information to a third party (other than an Affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient party provides the other party with timely prior written notice of such requirement.

12.4 **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision shall not apply to Customer's payment obligations.

12.5 **Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions, or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

12.6 **Waiver.** Any waiver of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

12.7 **Electronic Communications.** If APC and Customer mutually agree, business communications between the parties, including, but not limited to, Purchase Orders, invoices, and payment, may be submitted electronically. In such case, the parties shall mutually agree in writing upon supplemental terms and conditions, including technical standards, for the electronic exchange of such items including refresh frequency.

12.8 **Remedies.** The remedies set forth in Terms and Conditions shall be the exclusive remedies of the parties.

12.9 **Export Control.** Customer acknowledges and agrees that the commodities, software, and/or technology herein are subject to the export control laws and regulations of the United States and/or other national governments. These regulations include, but are not limited to, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury Office of Foreign Assets Controls (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. Buyer will comply with these laws and regulations. Customer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, Treasury, or Commerce. In addition, any commodities, software, or technology herein may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g. nuclear, chemical, or biological weapons, and the missile technology to deliver them). APC may suspend performance if Customer is in violation of any applicable laws or regulations.

12.10 **Dispute Resolution.** THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE COMMONWEALTH OF MASSACHUSETTS.

12.11 **Data Protection.** (a) In this Section "the Directive" means Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and where appropriate, terms used in this clause shall have meanings ascribed to them in the Directive. (b) The Customer acknowledges and agrees that all personal data provided by it or on its behalf will be processed by and on behalf of the Company in connection with the Services. Each party shall comply with the Directive as regards all such processing.



AMERICAN POWER CONVERSION LIMITED FACTORY WARRANTY

One-Year Factory Warranty¹

The limited warranty provided by American Power Conversion (APC[®]) in this Statement of Limited Factory Warranty applies only to products you purchase for your commercial or industrial use in the ordinary course of your business.

Terms of Warranty

American Power Conversion warrants its products to be free from defects in materials and workmanship for a period of one year from the date of purchase. APC obligation under this warranty is limited to repairing or replacing, at its sole discretion, any such defective products. This warranty does not apply to equipment that has been damaged by accident, negligence or misapplication or has been altered or modified in any way. Repair or replacement of a defective product or part thereof does not extend the original warranty period. Any parts furnished under this warranty may be new or factory remanufactured.

Non-transferable Warranty

This warranty applies only to the original purchaser who must have properly registered the product. Product may be registered at warranty.apc.com.

Exclusions

APC shall not be liable under the warranty if its testing and examination disclose that the alleged defect in the product does not exist or was caused by end user or any third person misuse, negligence, improper installation or testing. Further APC shall not be liable under the warranty for unauthorized attempts to repair or modify wrong or inadequate electrical voltage or connection, inappropriate on-site operation conditions, corrosive atmosphere, repair, installation, start-up by non-APC designated personnel, a change in location or operating use, exposure to the elements, Acts of God, fire, theft, or installation contrary to APC recommendations or specifications or in any event if the APC serial number has been altered, defaced, or removed, or any other cause beyond the range of the intended use.

¹ To determine which factory warranty applies to the APC product you purchased, please consult the factory warranties located on the APC web site: www.apc.com/products

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF PRODUCTS SOLD, SERVICED OR FURNISHED UNDER THIS AGREEMENT OR IN CONNECTION HEREWITH. APC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTION AND FITNESS FOR A PARTICULAR PURPOSE. APC EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED, OR AFFECTED BY AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, APC RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. THE WARRANTIES SET FORTH ABOVE CONSTITUTE APC SOLE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR ANY BREACH OF SUCH WARRANTIES. APC WARRANTIES RUN ONLY TO PURCHASER AND ARE NOT EXTENDED TO ANY THIRD PARTIES.

IN NO EVENT SHALL APC, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, ARISING OUT OF THE USE, SERVICE OR INSTALLATION, OF THE PRODUCTS, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER APC HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. SPECIFICALLY, APC IS NOT LIABLE FOR ANY COSTS, SUCH AS LOST PROFITS OR REVENUE, LOSS OF EQUIPMENT, LOSS OF USE OF EQUIPMENT, LOSS OF SOFTWARE, LOSS OF DATA, COSTS OF SUBSTITUANTS, CLAIMS BY THIRD PARTIES, OR OTHERWISE.

NO SALESMAN, EMPLOYEE OR AGENT OF APC IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. WARRANTY TERMS MAY BE MODIFIED, IF AT ALL, ONLY IN WRITING SIGNED BY AN APC OFFICER AND LEGAL DEPARTMENT.

Warranty Claims

Customers with warranty claims issues may access the APC worldwide customer support network through the APC web site: support.apc.com. Select your country from the country selection pull-down menu. Open the Support tab at the top of the web page to obtain contact information for customer support in your region.

VMWARE

End User License Agreement

VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”) SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE. IN THIS EULA, “YOU” MEANS THE “CUSTOMER” NAMED IN THE ELA ORDER FORM TO WHICH THIS EULA IS ATTACHED.

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS-IS” without indemnification, support or warranty of any kind, expressed or implied.

1. DEFINITIONS.

- 1.1 **“Affiliate”** means, with respect to a party, an entity that is directly or indirectly controlled by or is under common control with such party, where “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity (but only as long as such person or entity meets these requirements).
- 1.2 **“Documentation”** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 1.3 **“Guest Operating Systems”** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.
- 1.4 **“Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.5 **“License”** means a license granted under Section 2.1.
- 1.6 **“License Key”** means a serial number that enables You to activate and use the Software.
- 1.7 **“License Term”** means the duration of a License as specified in the Order.
- 1.8 **“License Type”** means the type of License applicable to the Software, as more fully described in the Order.
- 1.9 **“Open Source Software” or “OSS”** means software components that are licensed under a license approved by the Open Source Initiative (“OSI”) or similar open source or freeware license and are embedded in the delivered Software.
- 1.10 **“Order”** means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4.
- 1.11 **“Product Guide”** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.
- 1.12 **“Services Terms”** means the support services terms as indicated in the applicable Order, or if the Order does not specify any support services terms, then VMware’s then-current Support and Subscription Contract Terms and Conditions, copies of which are found at www.vmware.com/files/pdf/support/support_terms_conditions.pdf.
- 1.13 **“Software”** means the VMware Tools and the VMware computer programs listed on VMware’s commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 1.14 **“Territory”** means the Territory as set forth in the applicable Order, or if the Order does not specify the Territory, then the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.
- 1.15 **“Third Party Agent”** means a third party delivering information technology services to You pursuant to a written contract with You.
- 1.16 **“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.
- 1.17 **“VMware”** means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.
- 1.18 **“VMware Tools”** means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

- 2.1 Scope of License.** Subject to the terms and conditions of this EULA, VMware grants You, during the License Term, a non-exclusive, non-transferable License to use the Software, in executable code form only, within the Territory, for Your internal operations in accordance with (a) the Documentation; (b) the License Type for which You have paid the applicable fees; (c) other applicable limitations set forth in the Order. The License to the Software is limited to the quantities specified in each applicable Order.
- 2.2 Third Party Use.** Under the License granted to You in Section 2.1 above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.
- 2.3 Permitted Copies.** You may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Your possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this EULA. You may not otherwise copy the Software without VMware's prior written consent.
- 2.4 Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.
- 2.5 VMware Tools.** You may distribute the VMware Tools (whether or not as part of the Virtual Machine You create with the Software) to third parties solely when installed in a Guest Operating System to enhance its performance and functionality when running in a Virtual Machine, provided that You will be fully responsible for such third parties' compliance with the terms and conditions of this EULA, and any breach of this EULA by any such third party shall be deemed to be a breach of this EULA by You.
- 2.6 Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at http://www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2, and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms.

3. RESTRICTIONS; OWNERSHIP.

- 3.1 Restrictions.** You acknowledge that the Software and the structure, organization and source code of the Software constitute valuable trade secrets of VMware. Accordingly, except as expressly permitted in Section 2 or as otherwise authorized by VMware in writing, You will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this EULA; (e) translate, modify or create derivative works based upon the Software; (f) permit any use of or access to the Software by any third party; (g) remove any product identification, proprietary, copyright or other notices contained in the Software; or (h) operate the Software on behalf of or for the benefit of any third party, including the operation of any service that is accessed by a third party, except that, for the purposes of this Section 3.1 (h), You may use the Software to deliver hosted services to Your Affiliates.
- 3.2 Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware (at info@vmware.com), provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.
- 3.3 Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order.
- 3.4 Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.
5. **AUDIT RIGHTS.**
- 5.1 **Records.** You will, during the License Term for any Software licenses acquired under this EULA (and for a period of two (2) years from the expiration of the applicable License Term), maintain accurate records of your use of the Software sufficient to demonstrate Your compliance with the terms of this EULA and all Orders.
- 5.2 **Audit Rights.** During the period in which You are obligated to maintain such records, VMware, or its third party auditor, may, upon reasonable notice to You, audit such records to verify that You have (a) used the Software solely in the manner authorized herein; (b) paid all applicable license fees; and (c) otherwise complied with the terms of this EULA and all Orders. VMware may conduct no more than one (1) audit in any twelve (12) month period. Audits will be conducted during normal business hours and VMware will use commercially reasonable efforts to minimize the disruption of Your normal business activities. VMware, and any third-party auditor, shall not have physical access to Your computing devices in connection with any such audit, without Your prior written consent. You will reasonably cooperate with VMware and/or its third-party auditor and will promptly pay directly to VMware any underpayments revealed by such audit. You will promptly reimburse VMware for all reasonable costs and expenses incurred by VMware for such audit if: (i) such audit reveals an underpayment by You of more than five percent (5%) of the fees payable by You to VMware for the period audited, or (ii) such audit reveals You have materially failed to maintain accurate records of Your use of the Software.
6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Services Terms.
7. **WARRANTIES.**
- 7.1 **Software Warranty.** VMware warrants to You that the Software will, for a period of ninety (90) days following delivery ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You all License fees actually paid by You, in which case the License for the applicable Software and Your right to use such Software will terminate.
- 7.2 **Disclaimer of Warranties.** THE EXPRESS WARRANTY IN SECTION 7.1 ABOVE IS IN LIEU OF AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE) REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS EULA. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.
8. **INTELLECTUAL PROPERTY INDEMNIFICATION.**
- 8.1 **Defense and Indemnification.** Subject to the remainder of this Section 8, VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("**Infringement Claim**") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement; provided that You: (i) promptly provide VMware with notice of such Infringement Claim; (ii) allow VMware sole control over the defense thereof and related settlement negotiation; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.
- 8.2 **Remedies.** Should the Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense either: (a) procure the rights necessary for You to make continued use of the affected Software in accordance with this EULA; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 shall limit VMware's obligation under Section 8.1 to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

8.3 Exclusions. Notwithstanding the foregoing, VMware will have no obligation under this Section 8 or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware revision would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; (f) any claim that relates to Linux or Android open source software, even when it has been embedded into or distributed with the Software or (g) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

9. LIMITATION OF LIABILITY.

9.1 Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE LESSER OF (1) THE LICENSE FEES YOU PAID FOR THE SOFTWARE UNDER THIS EULA, IF ANY, OR (2) ONE MILLION U.S. DOLLARS (\$1,000,000.00 USD). THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.2 Further Limitations. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

10. TERMINATION.

10.1 License Term. This EULA will terminate in its entirety upon the termination of the License Term, unless terminated earlier under this Section 10.

10.2 Termination for Breach. VMware may terminate this EULA in its entirety effective immediately upon written notice to You if: (a) You breach any provision in Section 3 and do not cure the breach within ten (10) days after receiving written notice thereof from VMware; (b) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; (c) You breach any other provision of this EULA and don't not cure the breach within thirty (30) days after receiving written notice thereof from VMware; or (d) You commit a material breach that is not capable of being cured.

10.3 Termination for Insolvency. VMware may terminate this EULA in its entirety effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4 Effect of Termination. If VMware terminates this EULA under this Section 10: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease to exist; and (b) You must promptly discontinue all use of all Software, and (destroy all copies of the Software and all License Key(s)) and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5.1 (Records), 5.2 (Audit Rights), 7.2 (Disclaimer of Warranties), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General) will any survive termination of this EULA.

11. CONFIDENTIAL INFORMATION.

11.1 Definition. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labeled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

11.2 Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by the EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of the EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

- 11.3 Exceptions.** Recipient's obligations under Section 11.2 with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- 12. GENERAL.**
- 12.1 Assignment.** This EULA and any Orders, and any of Your rights or obligations thereunder, may not be assigned, subcontracted or transferred by You, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of VMware. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.
- 12.3 Waiver.** The waiver of a breach of any provision of this EULA shall not constitute a waiver of any other provision or any subsequent breach.
- 12.4 Severability.** If any provision of this EULA is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this EULA will remain in full force and effect.
- 12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this EULA.
- 12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to."
- 12.7 Governing Law.** The EULA is governed by the laws of the State of California and the United States of America, excluding its conflict of law principles. The UN Convention on International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. If any legal action is brought by a party to enforce the Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the non-prevailing party.
- 12.8 Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 12.9 Product Guide.** In addition to the above sections, Your use of the Software is subject to the terms and conditions of the Product Guide, which is incorporated herein by reference.
- 12.10 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You, unless the parties execute a written agreement expressly indicating: (i) that such Order shall modify this EULA; or (ii) that the terms of such Order shall supersede and control in the event of any inconsistency.
- 12.11 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.
- 12.12 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. If You have any questions concerning this EULA, please send an email to info@vmware.com.

Authorized Reseller	Full Catalog (Y/N) if No, please Specify	National (Y/N) if No please Specify	Contact Information
ZUTEC LLC	Y	Y	mike@2utec.com
5S Technologies	Y	Y	Mike.Shook@5STechnologies.com
954 CONSULTANTS LLC	Y	Y	support@954consultants.com
Accudata Systems, Inc.	Y	Y	mjohnson@AccudataSystems.com
ACE SOLUTIONS LLC	Y	Y	
ACP Creativit	Y	Y	Dave.Pisani@cccp.com
Acture Solutions, Inc.	Y	Y	Ettam@acturesolutions.com
Advanced Network Management	Y	Y	
ADVANCED NETWORK SYSTEMS INC	Y	Y	emily.bessell@getadvanced.net
ADVIZEX TECHNOLOGIES LLC	Y	Y	
All Covered a Konica Minolta Company	Y	Y	agoebel@allcovered.com
AllConnected, Inc.	Y	Y	EddieC@allconnected.com
Alliance Technology Group LLC	Y	Y	mark.stamper@alliance-it.com
Alturra-Tech	Y	Y	pgold@alturra-tec.com
Apex Technology Group	Y	Y	HMosca@apextechgroup.com
Applied Technology Services	Y	Y	
ARRAYA SOLUTIONS INC	Y	Y	jsharp@arraysolutions.com
Aspire Technology Partners LLC	Y	Y	rschmidt@aspiretransforms.com / Reporting_ar@aspiretransforms.com
Avalon Technologies, Inc.	Y	Y	
B2 LLC	Y	Y	
Baum Control Systems Inc. D/B/A The Computing Center	Y	Y	mary@compcenter.com
BCTI	Y	Y	<a href="mailto:Cyndee.Purdy-Godsey<cpurdy-godsey@bcti.com>">Cyndee.Purdy-Godsey<cpurdy-godsey@bcti.com>
BEARCLOUD INC	Y	Y	dj@bearcloud.net
Beck Computer Systems, Inc.	Y	Y	<a href="mailto:Gary.D.Beck<gbeck@beckcomputers.com>">Gary.D.Beck<gbeck@beckcomputers.com>
Better Direct	Y	Y	
Bloomip, Inc.	Y	Y	
Blue Chip Tek, Inc.	Y	Y	
BlueAlly Technology Solutions LLC	Y	Y	<a href="mailto:Hope.Jepson<HJepson@blueally.com>">Hope.Jepson<HJepson@blueally.com>
Bluenet Technologies	Y	Y	
Broadway Typewriter dba AREY JONES EDUCATIONAL Solutions	Y	Y	Sydney.Bensinger@areyjones.com
BUCKEYE TECHNOLOGY SOLUTIONS	Y	Y	<a href="mailto:Joni.Wood<jwood@buckeyemountain.com>">Joni.Wood<jwood@buckeyemountain.com>
Calian Corp	Y	Y	
Cambridge Computer	Y	Y	jgordon@cambridgecomputer.com
Candoris Technologies	Y	Y	jperkins@candoris.com
Carolina Advanced Digital, Inc.	Y	Y	
Carr Business Systems	Y	Y	
Cherbonnier Mayer & Associates Inc. CMA	Y	Y	
Chicksaw Telecom Inc.	Y	Y	JJorgensen@chickasawtel.com
Choice Solutions LLC	Y	Y	
CHOICE TECHNOLOGIES, LLC	Y	Y	ty@choice.technology
Clear Technologies Inc.	Y	Y	
CloudAI	Y	Y	
Cloud Logic LLC	Y	Y	<a href="mailto:Bill.Benedict<benedict@cloudlogicit.com>">Bill.Benedict<benedict@cloudlogicit.com>
Clutch Solutions	Y	Y	
CNP Technologies, LLC	Y	Y	
CodeBlue Technology LLC	Y	Y	Pnighitingale@codebluetechnology.com
ComDoc Inc.	Y	Y	Daniel.Bowman@xerox.com
COMMUNICATIONS CONSULTING INC	Y	Y	
Compulink Technologies, Inc.	Y	Y	Governmentsales@compu-link.com
Computex Inc. dba Computex Technology Solutions	Y	Y	contracts@computex.net
Computer Design & Integration LLC	Y	Y	cdi.legal@cdille.com
Computer System Integrators	Y	Y	lheinrich@csiny.com
Computer Transition Services Inc (CTSI)	Y	Y	
ComSource, Inc.	Y	Y	apuccia@comsourceny.com
CONNECTED SOLUTIONS GROUP LLC	Y	Y	rhawkins@thisiscsg.com
Connecticut Business Systems LLC	Y	Y	
Converge Technology Solutions, LLC	Y	Y	
Converged Communications dba Convergent Communications	Y	Y	ORDERS@ASKCONVERGENT.COM
ConvergeOne	Y	Y	JHilgreen@convergeone.com
Conway Technology Group LLC	Y	Y	
Copper River Information Technology LLC	Y	Y	
CoreBTS	Y	Y	
CORPORATE COMPUTER SOLUTIONS INC	Y	Y	LGrippio@corporatecomputersol.com
Corus Group LLC dba Corus360, A Converge Company	Y	Y	
CorTech, Inc dba B12 Government Solutions	Y	Y	dblom@b12gov.com
CrossConnect Engineering	Y	Y	
Cumberland Group, LLC	Y	Y	chuck.edmond@cumberland.com
Custom Storage dba CSTOR	Y	Y	
Dasher Technologies a Converge Tech company	Y	Y	larry.melvin@convergetp.com
Data Center Warehouse	Y	Y	<a href="mailto:John.Zimmer<John.Zimmer@4dcw.com>">John.Zimmer<John.Zimmer@4dcw.com>
Data Networks of America, Inc	Y	Y	dhooper@datanetworks.com (Reporting) samhittie@datanetworks.com (POC)
Dattec, Inc.	Y	Y	
DH Technologies, LLC	Y	Y	chuck@dhtech.com
DIRSEC LLC	Y	Y	
Distributed Technology Group, LLC	Y	Y	
DOF Creation	Y	Y	Sbgordon@dofcreations.com
DPE Systems Inc.	Y	Y	
The Drala Project dba ReDesign Group	Y	Y	Psanginario@redsign-group.com
DRCS LLC	Y	Y	<a href="mailto:David.Robbins<drobbs@drclsl.com>">David.Robbins<drobbs@drclsl.com>
Eagle Software, Inc. dba Eagle Technologies	Y	Y	
ECHOSTOR TECHNOLOGIES INC	Y	Y	
EDGE SOLUTIONS LLC	Y	Y	larry.paul@echostor.com
eGroup Holding Company	Y	Y	
Encore Technology Group	Y	Y	Clinton.Boyleston@eGroup-us.com
Enterprise Networking Solutions, Inc	Y	Y	chodges@ens-inc.com / Ashley.Raynes.araynes@ens-inc.com (Reporting
EOS Systems	Y	Y	PETERS@EOS-SYSTEMS.COM
ePlus (formerly Innovative Systems & Solutions, Inc.)	Y	Y	CONTRACTS_sladoperationsteam@eplus.com
First Light Technologies	Y	Y	
FirstLight Fiber Inc.	Y	Y	rchase@firstlight.net
Five Rivers IT Inc.	Y	Y	
Flagler Technologies	Y	Y	shana.clark@flagler.io
FOCUS TECHNOLOGY SOLUTIONS INC	Y	Y	
Fusion Digital	Y	Y	PFerranti@fusion
GLOBAL MARKET INNOVATORS, INC.	Y	Y	mo.hussain@GMI.com

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GHA Associates	Y	Y	govpaperwork@gha-associates.com
Golden Star Technology	Y	Y	<a href="mailto:Dennis.Wang<dpwang@gstes.com>">Dennis.Wang<dpwang@gstes.com>
Granville Associates dba Vision Business Products	Y	Y	
GreenPages Inc.	Y	Y	aczeh@greenpages.com
Groupware Technology, Inc.	Y	Y	jeremy@groupwaretech.com
GuidePoint Security LLC	Y	Y	
Heartland Business Systems	Y	Y	aplagement@hbs.net
High Point Networks LLC	Y	Y	kevin.caughman@guidepointsecurity.com
Holmans USA	Y	Y	
iCopy dba IBE Digital	Y	Y	sloan@ibedigital.com
IMPEX Technologies, Inc.	Y	Y	rsah@impextechnologies.com
InCare K12 Incare Technologies	Y	Y	jmcrae@incarek12.com
Innovative Inc.	Y	Y	
INSPIRED TECHNOLOGIES	Y	Y	zdunlap@inspired-tech.net
Integra Business Center, Inc., d/b/a IntegraONE	Y	Y	
In-Telecom Consulting	Y	Y	
InterDev, LLC	Y	Y	yendormagement@interdev.com
Internetwork Services Inc. dba Internetwork Engineering	Y	Y	capplegate@ineteng.com
International Data Link Inc.	Y	Y	
IT1SOURCE LLC	Y	Y	Guy.steinbrink@it1.com
Itsavvy LLC	Y	Y	bfields@itsavvy.com
JNM DATA SOLUTIONS INC	Y	Y	brad@jnmdata.com
JRC Technologies LLC	Y	Y	carroll@jrcnow.com
Juniper Financial Services	Leasing	Y	jpeters@juniper.net
Katalyst Network Group LLC	Y	Y	
KELLER SCHROEDER & ASSOC INC	Y	Y	
Kelley Connect	Y	Y	
KIS (sable computer)	Y	Y	sue@kisce.com
Kopesky Enterprises DBA Surelock	Y	Y	bkopesky@surelocktechnology.com
Layer 3 Communication	Y	Y	ewallace@layer3com.com
Leslie Digital Imaging, LLC	Y	Y	
Lewan and Associates	Y	Y	brian.jones@xerox.com
Logicworks Systems Corp	Y	Y	sbaansal@logicworks.com
Lyon Micro	Y	Y	
M.A. Polce Consulting Inc.	Y	Y	<a href="mailto:Kelly.Palinski<kelly@mapolce.com>">Kelly.Palinski<kelly@mapolce.com>
Magna5 MS LLC	Y	Y	
Main Street Technologies	Y	Y	heidi@main-street-tech.com
Mainline Information Systems	Y	Y	
MAINMICRO TECHNOLOGIES CORP	Y	Y	bajetkarim@mainmicro.com
Marcum Technology LLC	Y	Y	
MCNUTT CONSULTING SERVICES INC	Y	Y	
Mercury Networks of New York LLC	Y	Y	larry@mercurynetworks-ny.com
Mission Critical Systems	Y	Y	SALESSUPPORT@LOCKED.COM
Mobile Integrate Inc	Y	Y	elbert.cloriga@mobileintegrate.com
Modal Networks, Inc.	Y	Y	briank@modalnetworks.net
More Power Technology Group	Y	Y	
MOVING ON IT SOLUTIONS LLC	Y	Y	
MRK Technologies LTD dba Inversion6	Y	Y	
MVATION WORLDWIDE INC	Y	Y	BNW@MVATION.COM
NE SYSTEMS INC	Y	Y	
NetGain Technologies	Y	Y	CMCrosby@NetGainIT.com
NETWAY COMMUNICATIONS INC.	Y	Y	
Network Center Inc.	Y	Y	ben.nelson@netcenter.net
Network Performance	Y	Y	<a href="mailto:Dustin.Vaughn<dustin@net-perf.net>">Dustin.Vaughn<dustin@net-perf.net>
Network Technologies LLC	Y	Y	
Networking For Future, Inc. (NFF)	Y	Y	cpeabody@nffinc.com
NIC Partners	Y	Y	swwhite@nicpartnersinc.com
Nordisk Systems Inc a Converge Company	Y	Y	rory@nordisksystems.com
Nth Generation Computing	Y	Y	
Ocean Computer	Y	Y	Amber.Lawhun@PBSNOW.COM
OmniPro	Y	Y	
Opkalla Inc.	Y	Y	
opsZero	Y	Y	
Optimal Technologies	Y	Y	
Pandora Cloud	Y	Y	kim@pandoracloud.net
Pasack Data Services	Y	Y	Mandy.Rusch@prologicsits.com
PC SOLUTIONS & INTEGRATION	Y	Y	ealmanza@pcsusa.net
PC Specialists dba TIG	Y	Y	
PC University Distributors Inc.	Y	Y	
People Driven Technology Inc.	Y	Y	
PHILOTEK LLC	Y	Y	hwyche@philotek.com
Pillar Communications Inc.	Y	Y	MCAMPBELL@PILLARCOMMUNICATIONS.COM
Pinnacle Business Solutions, Inc.	Y	Y	pburak@thepinnaclegroup.com
Pinnacle Business Systems, Inc.	Y	Y	
Pinnacle Networx LLC	Y	Y	
Pivotalogic	Y	Y	philip.geier@pivotalogic.com
PNW Security, LLC	Y	Y	
PORTOLA SYSTEMS INC	Y	Y	JMoschin@portolasystems.net
Presidio	Y	Y	
PROACTIVE SOLUTIONS INC	Y	Y	
Procellis Technology, Inc.	Y	Y	
PROLOGIC ITS, LLC	Y	Y	mandy.rusch@prologicsits.com
Protech Computer Systems	Y	Y	dmurphy@protsys.com
R2 Unified Technologies, LLC	Y	Y	David.Bester@r2ut.com
Racom Business Inc.	Y	Y	
Ramsys Storage Solutions	Y	Y	
Red River Technology LLC	Y	Y	
Right! Systems Inc.	Y	Y	kjnoll@rightsys.com
RMM	Y	Y	
Safari Micro	Y	Y	Matt.kozlowski@safarimicro.com
Saitech	Y	Y	
Sanity Solutions	Y	Y	
Saxon Business Systems	Y	Y	
SEHI COMPUTER PRODUCTS INC	Y	Y	Carolt@sehi.com
Sentinel Technologies	Y	Y	
ServerMonkey.com LLC	Y	Y	

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SingleSource IT, LLC	Y	Y	
SJN Data Center LLC dba Encore Tech	Y	Y	
SMP	Y	Y	
SOCCOUR SOLUTIONS	Y	Y	bbyerly@socour.com
Softchoice	Y	Y	
Softnet Solutions	Y	Y	kush@softnets.com
Solid Border, Inc.	Y	Y	
SONDA USA INC	Y	Y	
Southern Computer Warehouse	Y	Y	valerie.state@scw.com
Spinecube	Y	Y	josh.kandl@spinecube.com
Starlight Technology	Y	Y	
Sterling Computers	Y	Y	
Stewart a Xerox Company	Y	Y	
STRUCTURED COMMUNICATION SYS INC	Y	Y	
SUMMIT 360 INC	Y	Y	dustin.hartenstein@summit360.com
Synergy IT Solutions	Y	Y	aknapton@synergyits.com
Tanchez Global Management	Y	Y	tanaz@tanches.com
TEAM 29B, INC	Y	Y	
TEC COMMUNICATIONS INC	Y	Y	mjschilling@tec4it.com
Tech Orchard LLC	Y	Y	kyle@techorchard.com
Technology Integration Group	Y	Y	contractadmin@tig.com
Technical & Scientific Application, Inc	Y	Y	Shannon.Vinzant@tsa.com
Tec-Refresh, Inc.	Y	Y	Efrem.gonzales@tec-refresh.com
Tego Data Systems LLC	Y	Y	salesops@tegodata.com
TekLinks dba C Spire Business	Y	Y	amcintosh@cspire.com
TELETRONICS SERVICES, INC.dba TTX	Y	Y	
Tensus Technology	Y	Y	
The Ergonomic Group	Y	Y	
The Fruth Group Inc.	Y	Y	djenks@fruthgroup.com
Thomas Consultants, Inc.	Y	Y	
TOTAL COMMUNICATIONS INC	Y	Y	
Trinity 3	Y	Y	
TROUBADOUR TECHNOLOGY, INC.	Y	Y	
TSG Server & Storage, Inc	Y	Y	
Unique Digital	Y	Y	mfulford@uniquedigital.com
Unistar-Sparco Computers, Inc.	Y	Y	lim@sparco.com
Valcom Salt Lake City LLC	Y	Y	
vCloud Tech	Y	Y	mkhan@vcloudtech.com
vCore Technology Partners LLC	Y	Y	
VDA LABS LLC	Y	Y	jblankenship@ydalabs.com
VectorUSA	Y	Y	mallen@vectorusa.com
verCloud	Y	Y	
Vertikal6, Inc.	Y	Y	johna@vertikal6.com
Vision Business Product	Y	Y	jeff@visionbp.com
Virtix Consulting	Y	Y	leon.robinson@virtixit.com
Vivacity Tech	Y	Y	contracts@vivacitytech.com
VPLS Solutions, LLC	Y	Y	ktsai@vpls.com
Wachter Technology Solutions	Y	Y	Phil.kennedy@wachter.com
Waypoint Business Solutions, LLC	Y	Y	pneyman@waypointsolutions.com
Waypoint Government Solutions LLC	Y	Y	jae@waypointgovernment.com
Wholesale Computer Exchange	Y	Y	
Winslow Technology Group, LLC	Y	Y	nino@winslowtg.com
WrightCore			
XBS a Xerox Company			
XTEK			
Y & S TECHNOLOGIES INC			
Yeo & Yeo Computer Consulting, LLC			matt.ruhlig@yeoandyeo.com
Zeno Office Solutions, Inc.			
ZIVARO INC			cpalacios@zivaro.com

Manufacturer	Discount off List
ACER	2.00%
AddOn	2.00%
Adlumin	2.00%
APC	2.00%
Apple	1 or 2%
Arctic Wolf	2.00%
Aruba	2.00%
ATEN	2.00%
Axis	2.00%
Bitdefender	2.00%
BCTI Professional Services	2.00%
Cherry	2.00%
Cisco	2.00%
Citrix	2.00%
Codi	2.00%
Cradlepoint	2.00%
Cymulate	2.00%
Dell	2.00%
Eaton	2.00%
Ekahau	2.00%
Enet	2.00%
Epson	2.00%
Ergotron	2.00%
ESET	2.00%
Exagrid	2.00%
Forcepoint	2.00%
Fortinet	2.00%
Fujitsu	2.00%
Google ED	2.00%
GumDrop	2.00%
HPE	2.00%
HPI	2.00%
Huddly	2.00%
iBoss	2.00%
Interrosec	2.00%
Jabra	2.00%
Juniper	2.00%
KeepIT	2.00%
Kodak Alaris	2.00%
Lenovo	2.00%
LG	2.00%
Microsoft	2.00%
Mimecast	2.00%

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TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 9.A
SUBJECT: **WSA24-052:** Approval of a Water Service Application Submitted by Ikon.5 Architects on Behalf of Owner Embry Riddle Aeronautical University. Location: APN 106-03-004 Comprising 240 Acres. Requesting 11.33 Acre Feet Per Year.

ITEM SUMMARY

This item is for approval of a Water Service Application for a new student union building, a multi-use facility for studying, meeting, and other campus activities at Embry-Riddle. The site is located on the Embry-Riddle campus west of Willow Creek Road.

BACKGROUND

Per the Amended 2022 Water Management Policy, a Water Service Agreement (WSA) application was submitted for this project for review of estimated water usage. No formal planning application is required for this project per the Land Development Code. A demand analysis was prepared by Dibble Engineering, using City General Engineering Standards (GES) water multipliers. The project consists of a new student union building to replace 5 old buildings which are being demolished to make space. The estimated net increase in usage is calculated to be 9 AFY. The project's total water demand, including 1.55 acres of landscaping at 1.5 AFY/acre is 11.33 acre-feet per year. The Subcommittee on Water Issues reviewed this Water Service Agreement application at the January 7, 2025 meeting and recommended forwarding to the full Council for approval.

Attachment 1 provides a vicinity map showing the location of the project with respect to the Embry-Riddle campus. Attachment 2 provides a water plan showing the layout of the proposed building and the demand analysis prepared by the engineer.

FINANCIAL IMPACT

None at this time.

RECOMMENDED ACTION

MOVE to approve or deny WSA24-052

ATTACHMENTS

1. Attachment 2 - Water Plan & Demand Analysis
2. WSA24-052 Embry Riddle Presentation

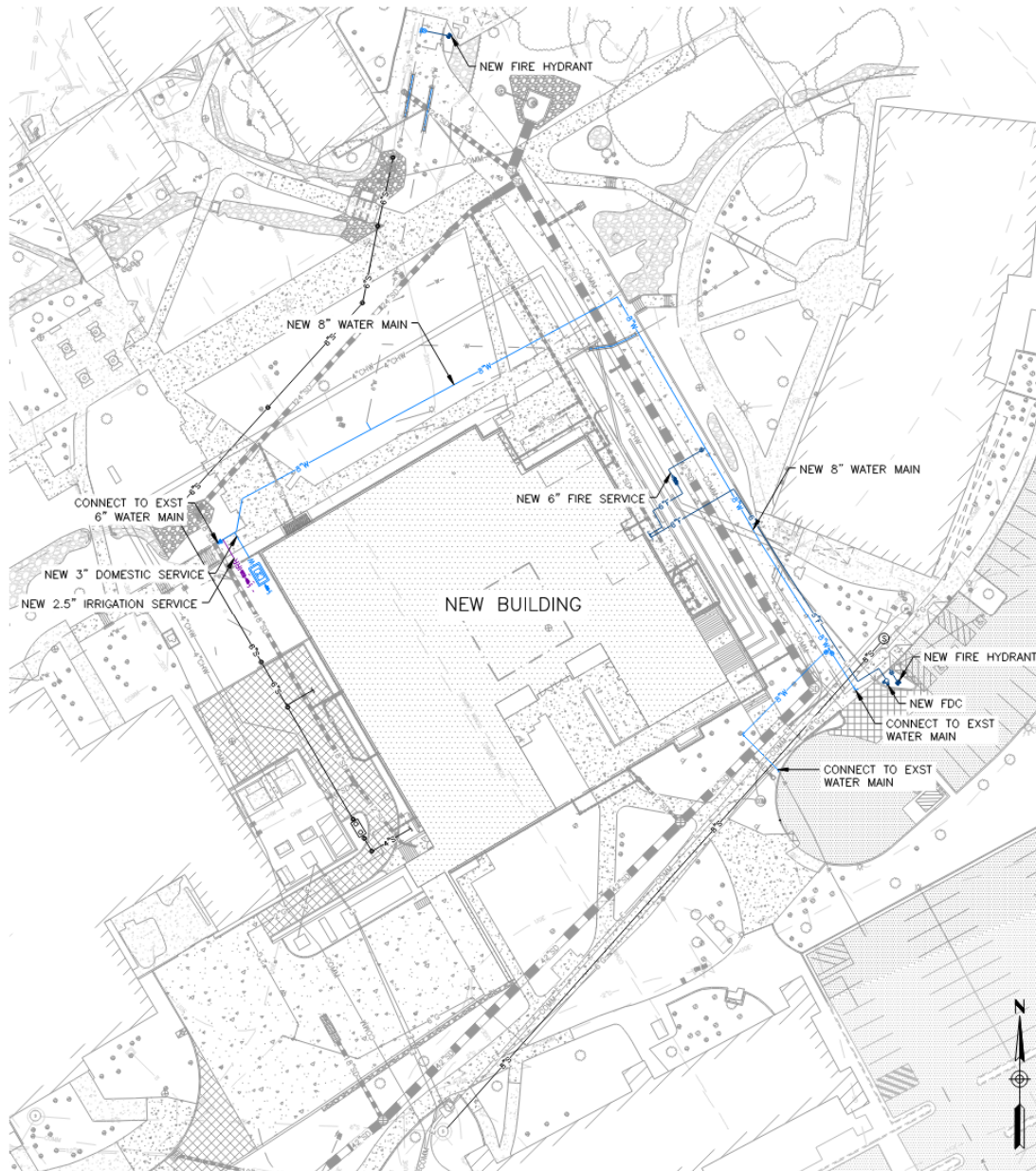


Figure 1 – Water Plan



WATER DEMAND ANALYSIS

To:	Ben Easley, City of Prescott	Date:	November 7, 2024
Copy:	Brian Ruiz, City of Prescott	Client Project:	
From:	Travis G Dunn, PE, Dibble	Project No:	1122162
	Adrian Carvajal, PE, Dibble		
Subject:	Embry Riddle Aeronautical University (ERAU) Student Union – WSA Water Demand Analysis		

PROJECT DESCRIPTION

This water demand analysis has been prepared to supplement the previously prepared water design memo for the ERAU Student Union project. The project site is located on a portion of Assessor’s Parcel Numbers (APN) 106-03-004 and 106-08-006, within the existing ERAU campus. The project site is bound by existing campus buildings to the west and east and existing hardscape and plaza area to the north and south. This project includes a new student union building, as well as the associated new utility services and hardscape improvements around the site.

WATER DEMAND ANALYSIS

The previously prepared water design memo was developed to evaluate the capacity of the existing and proposed water infrastructure in consideration of peak demands at the new building. The intent of this water demand analysis is to provide an estimated overall annual demand increase generated by the new building for the city to verify availability in the City’s overall water budget.

Per the water design memo, the peak flow and maximum daily flow were calculated based on plumbing fixtures, since Table 4-1 of the City of Prescott’s (COP) *General Engineering Standards (GES)* did not have an applicable classification to evaluate the specific demand of the new student union building. To calculate the additional annual demand generated by the new student union, it is appropriate to evaluate the school facilities (no residence halls) throughout the campus using the “School” classification for high school with gym, showers, and cafeteria. **Table 1** provides a summary of the unit demands in gallons per day (gpd) per person for both students and staff.

Table 1 – Unit Flows from COP GES

Classification	Unit Design Flow (gpd/person)
Staff	24
Student	Middle & High – 24 With Gym & Showers – 6 With Cafeteria – 4 Total – 34

To calculate the additional demand generated by the new student union, existing facility data was used to calculate total demand per square foot of school facilities on campus (excludes residential buildings). **Table 2** provides a summary of the existing student and staff counts, as provided by ERAU.



Table 2 – SF Per Person Values

Total Staff	650
Total Residing Students	1,430
Total Commuting Students	1,820
Total Facility Square Footage	398,946
Unit	Rate (SF per person)
Facility SF per Student	123
Facility SF per Staff Member	614

Using these values, the additional facilities demand can be calculated based on the additional student and staff capacities generated by the addition of the student union. This calculation will also include the offset for the buildings that will be removed as part of the project. **Table 3** provides a summary of the additional school facility square footage that will be added as a result of this project.

Table 3 – Net Building Area Change (School Facilities)

Building	Addition/Removal	Square Footage Impact
Student Union (42)	A	+48,411
37	R	-1,684
38	R	-1,686
60	R	-1,840
61	R	-1,685
71	R	-4,738
	TOTAL	+36,778

The net additional average daily demand generated by the project is summarized in **Table 4**.

Table 4 – Net Additional Daily Demand

Additional Building Area (sf)	Additional Staff Capacity	Additional Staff Demand (gpd)	Additional Student Capacity	Additional Student Demand (gpd)	Additional Daily Demand (gpd)
36,778	60	1,440	300	10,200	11,640

As shown above, the project will add an average demand of 11,640 gpd to the campus. Per coordination with ERAU, full occupancy is expected for the fall and spring semesters, for a total of 220 days each year. During summer school, 37% occupancy is expected for a total of 86 days. This usage rate is based on data obtained from ERAU showing their 2024 summer usage of existing residence halls, but it is assumed that the residence hall usage rates also reflect the school facility usage rates. Based on the expected occupancy, the added annual domestic water demand due to the new student union building is expected to be 2,931,185 gallons, or approximately 9 acre-feet. Refer to **Table 5** for a summary of the annual domestic water demand calculation.



Table 5 – Annual Domestic Water Demand

Added Average Daily Demand (gpd)	Fall/Spring Semester Days	Fall/Spring Occupancy	Summer Days	Summer Occupancy	Annual Demand (acre-feet)
11,640	220	100%	86	37%	9

The project will also include new landscaping around the student union building, which will add irrigation water demand. Per direction from the City of Prescott, irrigation demand is calculated at 1.5 acre-feet per acre of landscaping. Plans show a total landscaping area of approximately 1.55 acres, which will add a demand of approximately 2.33 acre-feet. Adding the irrigation demand for the new landscape to the new domestic demand, the total additional annual demand for the new student union building will be approximately 11.33 acre-feet. Refer to **Table 6** for a summary of the total annual water demand generated by the new student union.

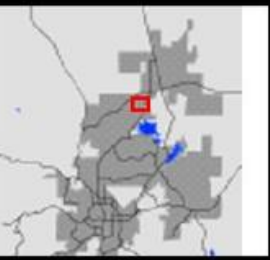
Table 6 – Total Annual Water Demand (acre-feet)

Annual Domestic Demand	Annual Irrigation Demand	Total Annual Demand
9	2.33	11.33

DEVELOPMENT BENEFITS

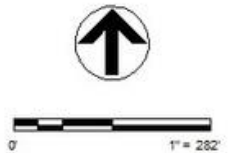
The scope of this project is to add a new student union building at the ERAU Prescott campus. The University has been noted to provide economic benefit to the City by bringing additional residents to the City for large parts of the year. In conjunction with the new student residence halls, the student union building will increase the number of people accessing the surrounding area. This will increase the visibility of businesses in Prescott. Jobs will also be added with the completion of the new student union building, as staff will be needed to maintain, work, and manage new facilities within the building.

In addition to the financial benefits, this project will enhance the campus's appeal, attracting more students from both local and non-local areas, thereby increasing student diversity.



106-03-004
3700 Willow Creek Rd
240 Acres

This map is a product of
The City of Prescott



This document is a graphic representation only of best available sources.
The City of Prescott assumes no responsibility for any errors.



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WIS Maps

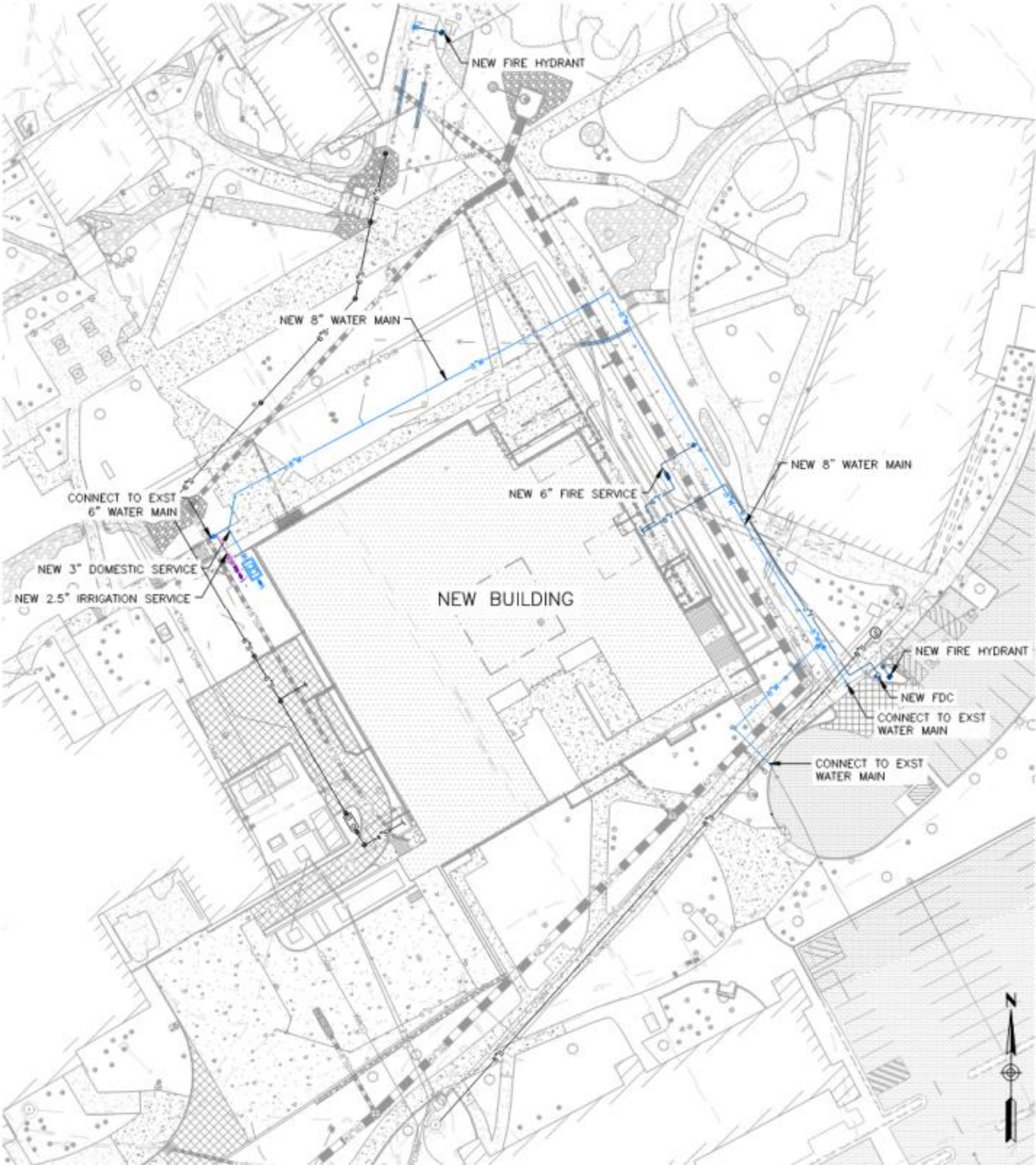


Figure 1 – Water Plan

WSA24-052 APPLICATION SUMMARY

- New Student Union building to replace 5 old buildings
 - Estimated net increase in usage is 9 AFY
- Estimated Demand Landscape – 1.55 acres at 1.5 AFY/acre
 - Estimated Total Demand – 11.33 AFY

POSSIBLE ACTIONS:

MOVE to approve WSA24-052

or

MOVE to deny WSA24-052



TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Public Works
ITEM #: 9.B
SUBJECT: Approval of City Contract No. 2023-210A6, an Amendment to City Contract No. 2023-210 with Fann Contracting, Inc. for the Construction of the Eastwood Drive Parking Improvements in an Amount Not to Exceed \$348,614.00. Funding is Budgeted & Available in the Streets Fund.

ITEM SUMMARY

This item is to approve an amendment to City Contract No. 2023-210 to Fann Contracting, Inc. in the amount of \$348,614.00 for construction of the Eastwood Drive Parking Improvements. The location of the project is shown on the attached vicinity map.

BACKGROUND

The project generally consists of constructing roadside parking improvements along Eastwood Drive. A group of four residences along the downslope side of the roadway were negatively impacted by the roadway reconstruction of the Penn Avenue/Eastwood Drive Improvements Project. The roadway was widened and raised which resulted in steeper driveways and the loss of historical roadside parking. The intent of this project is to restore the roadside parking as much as practicable.

This project supports the Council's strategic goal for highly rated city services and well-maintained streets.

Project Schedule

Per the contract, all work must be substantially complete within sixty (60) calendar days of the Notice to Proceed. Pending contract award, the following milestones have been identified:

Approval of Amendment	January 28, 2025
Pre-Construction Meeting	Week of February 10, 2025
Notice to Proceed	Week of February 24, 2025
Expected Completion Date	Week of April 28, 2025

FINANCIAL IMPACT

Funding for this contract is available from the Streets Fund.

RECOMMENDED ACTION

MOVE to approve City Contract No. 2023-210A6

ATTACHMENTS

1. City Contract No. 2023-210A6
2. Vicinity Map



Contract Amendment No. Six (6)

Job Order Contracting for Public Works / Horizontal Construction Projects

Eastwood Drive Parking Improvements

Fann Contracting, Inc.

CIP #: 2410-001

Contract No: 2023-210

Account No(s): 2157810-8930-16009

January 28, 2025

Purpose of Amendment:

To award three hundred forty-eight thousand six hundred fourteen dollars and no cents (\$348,614.00) for the Eastwood Drive Parking Improvements project per the terms, conditions and amount quoted in the project specifications and quote attached.

Summary of Contract:

	<i>Description</i>	<i>Amount of Amendment</i>	<i>Total amount Remaining for Fiscal year.</i>
FY2024	Total Contract Available for FY2024		\$ 3,000,000.00
	Amendment 1: PUSD Affordable Housing Project	\$ 448,836.00	
	Amendment 2: White Spar Trailhead Construction	\$ 574,038.00	
	Amendment 3: HWY 89 Effluent Line Repair	\$ 169,421.67	
	Amendment 4: Bean Peak Trailhead	\$ 50,106.83	
	Total Fiscal Year 2024 Unused Balance - FY2024 Closed		<u>\$ 1,757,597.50</u>
FY2025	Total Contract Available for FY2025		\$ 3,000,000.00
	Amendment 5: Airport Vehicle Service Road (VSR)	\$ 343,813.50	
	Amendment 6: Eastwood Drive Parking Improvements	\$ 348,614.00	
	Total Amount Remaining for other Projects in Fiscal Year 2025		<u>\$ 2,307,572.50</u>

This contract amendment is only for the amount per the quote attached.

All other terms of the original JOC contract remain the same.

SCOPE OF WORK :

The intent of the Plans and Specifications is to prescribe a complete work for the described project which the Contractor shall perform in a manner acceptable to the City Public Works Director and in full compliance with the terms of the Contract.

Unless otherwise specified in the Project Special Provisions (attached), the Contractor shall furnish all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, but not limited to, dust and traffic control measures, and to perform all work involved in executing the Contract in a satisfactory and workmanlike manner within the specified time.

All standard specifications and details referenced, unless otherwise noted, shall conform to all the City of Prescott Standard Specifications and Detail Drawings, most current revisions, and to the most current editions of the Uniform Standard Specifications and Details for Public Works Construction by the Maricopa Association of Governments (MAG Specifications and Details), including revisions thereto.

PROJECT SCHEDULE:

The Contractor shall fully complete all work under this Contract within sixty (60) calendar days beginning with the calendar day as noted in the Notice to Proceed. The Contractor shall at all times during the continuance of the Contract prosecute the work with such work force and equipment as is sufficient to complete the project within the time specified.



LIQUIDATED DAMAGES:

All time limits stated in the Contract Documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$430.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$430.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

BONDS:

A. On or before the execution of the Job Order Amendment, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to A.R.S. § 34 222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications, and conditions herein. Such bond shall be solely for the protection of the City. A copy of this bond shall be filed with the Prescott City Clerk.

B. Contractor shall also obtain a payment bond, pursuant to the provisions of A.R.S. § 34 222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.

C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

ITEMS ATTACHED:

Final Payment Acknowledgement
Contractor's Affidavit

Cost Proposal

Amendment 6 Expiration Date: June 30, 2025
Contract Expiration Date: June 30, 2025

Reviewed by:

Tim Sherwood, Capital Program Manager

Date

Approved by:

Fann Contracting, Inc. (Authorized signer)

Date

Approved by:

Gwen Rowitsch, Public Works Director

Date



Attest:

Sarah M. Siep, City Clerk

Date

Approved as to Form:

Joseph D. Young, City Attorney

Date

Copy to: City Clerk
Public Works



FINAL PAYMENT ACKNOWLEDGEMENT

To the City of Prescott, Arizona:

Fann Contracting, Inc.

6725 Generation Lane

Prescott, AZ 86302

jfann@fanncontracting.com

Fann Contracting, Inc., has submitted the final pay application for the Eastwood Drive Parking Improvements project Contract No. 2023-210A6 in the consideration of:

\$ _____
(Total Final Project Amount)

as full and complete payment under the terms of the Contract. All materials used and workmanship performed are expressly warranted to be free of defects for a period of twenty-four (24) months from the date of final acceptance by the City of Prescott, as stated in the warranty letter to be provided.

The Undersigned further agrees to indemnify and save harmless the City of Prescott against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said project within the next 90 days.

Signed and dated this _____ day of _____, 20____.

(Authorized Signature)

By: _____

Title: _____

State of _____)
County of _____) ss.

SUBSCRIBED AND SWORN to before me by _____
this _____ day of _____, 20 _____.

Notary Public

Commission Expires

Eastwood Drive Parking Improvements



Fann Contracting, Inc.

P.O. Box 4356

Prescott, AZ 86302

Contact: Derek Kack

Phone: 928-830-2191

Quote To:

COP

Job Name:

Eastwood Drive Parking Improvements

Att:

George Henderson

Date of Plans:

9/25/24

Revised Plans:

511 Eastwood and 527 Eastwood

Phone:

928-777-1130

Email:

george.henderson@prescott-az.gov

Proposal Date:

12/12/24

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Genera Construction Items					
10	Construction Stakes, Lines and Grades	1.00	LS	6,300.00	6,300.00
20	Public Relations	1.00	LS	2,500.00	2,500.00
30	Stormwater Pollution Prevention Plan (SWPPP)	1.00	LS	11,000.00	11,000.00
40	Mobilization/Demobilization	1.00	LS	39,000.00	39,000.00
50	Contract Allowance	1.00	ALL	25,000.00	25,000.00
60	Traffic Control Plan	1.00	LS	500.00	500.00
70	Barricades and Storage	1.00	LS	3,200.00	3,200.00
80	Flaggers (If Needed)	100.00	HRS	55.00	5,500.00
90	Incidental Traffic Related Items	1.00	LS	8,200.00	8,200.00
100	Message Boards (If Needed)	60.00	DAYS	100.00	6,000.00
General Construction Items Subtotal					107,200.00
511 Eastwood Drive					
110	Remove Existing Pullout at Proposed Retaining Wall	1.00	LS	5,600.00	5,600.00
120	VersaLok Retaining Wall	290.00	SF	85.00	24,650.00
130	3" Gravel Driveway	540.00	SF	5.50	2,970.00
140	Safety Rail	142.00	LF	124.00	17,608.00
145	Concrete Walkway and Pad	125.00	SF	28.00	3,500.00
150	Staircase Per Updated Sheet	1.00	LS	24,500.00	24,500.00
511 Eastwood Drive Subtotal					78,828.00
519 Eastwood Drive					
160	Remove Existing Pullout at Proposed Retaining Wall	1.00	LS	4,500.00	4,500.00
170	VersaLok Retaining Wall	250.00	SF	85.00	21,250.00
180	3" Millings Driveway	440.00	SF	5.50	2,420.00
190	Safety Rail	62.00	LF	124.00	7,688.00
200	Concrete Staircase	1.00	LS	8,500.00	8,500.00
519 Eastwood Drive Subtotal					44,358.00
527 Eastwood Drive					
210	Remove Existing Pullout at Proposed Retaining Wall	1.00	LS	7,000.00	7,000.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
220	VersaLok Retaining Wall	200.00	SF	85.00	17,000.00
230	Residential Concrete Driveway	290.00	SF	32.00	9,280.00
240	Safety Rail	49.00	LF	124.00	6,076.00
	527 Eastwood Drive Subtotal				39,356.00
	235 Eastwood Drive				
250	Remove Existing Pullout at Proposed Retaining Wall	1.00	LS	11,000.00	11,000.00
260	Concrete Retaining Wall	43.00	LF	1,400.00	60,200.00
270	3" Decomposed Granite Driveway	360.00	SF	6.50	2,340.00
280	Safety Rail	43.00	LF	124.00	5,332.00
	535 Eastwood Drive Subtotal				78,872.00

GRAND TOTAL

\$348,614.00

NOTES:

SCOPE OF WORK

Scope of work includes the bid items and quantities listed in the bid schedule of values. Pricing is based on Granite Basin plans dated 9/25/24, updated sheet for 511 Eastwood, and added scope at 527 Eastwood.

CLARIFICATIONS

Scope of work includes the bid items listed in the above schedule of values up to the specified quantities. Any adjustments from the specified quantities will be handled as an overrun using a contract modification. For contract allowance items, time and material rates will be reviewed and agreed upon by both parties prior to commencement of work.

EXCLUSIONS: 3rd Party Quality Assurance, unsuitable material, engineering, clear access to Fann's work, de-watering of any kind, water proofing coat/material on concrete wall, permit/inspection fees, utility conflicts, utility fees, utility relocation, irrigation locate or repair, landscaping, seeding, hard dig, tree removal or trimming, or items not listed in the scope summary provided or as clarified above.

Bidding Schedule

Eastwood Drive Parking Improvements

CIP #2410-001

Line #	Item #	Description	Qty	Unit	Unit Cost	Amount
General Construction Items						
1	105.8	Construction Stakes, Lines and Grades	1	LS	\$ 6,300.00	\$ 6,300.00
2	107.15	Public Relations	1	LS	\$ 2,500.00	\$ 2,500.00
3	107.16	Stormwater Pollution Prevention Plan (SWPPP)	1	LS	\$ 11,000.00	\$ 11,000.00
4	109.10	Mobilization/Demobilization	1	LS	\$ 39,000.00	\$ 39,000.00
5	109.11	Contract Allowance	1	ALL	\$ 25,000.00	\$ 25,000.00
6	401	Traffic Control Plan	1	LS	\$ 500.00	\$ 500.00
7	401.2a	Barricades and Storage	1	LS	\$ 3,200.00	\$ 3,200.00
8	401.2b	Flaggers (If Needed)	100	HRS	\$ 55.00	\$ 5,500.00
9	401.2c	Incidental Traffic Related Items	1	LS	\$ 8,200.00	\$ 8,200.00
10	401.2d	Message Boards (If Needed)	60	DAYS	\$ 100.00	\$ 6,000.00
<i>General Construction Items Subtotal</i>					\$	107,200.00
511 Eastwood Drive						
11		Remove Existing Pullout at Proposed Retaining Wall	1	LS	\$ 5,600.00	\$5,600.00
12		VersaLok Retaining Wall	290	SF	\$ 85.00	\$24,650.00
13		3" Gravel Driveway	540	SF	\$ 5.50	\$2,970.00
14		Safety Rail (Modified Rail Length to Include Stairs and DW per Plan)	142	LF	\$ 124.00	\$17,608.00
Concrete Walkway and Pad			125	SF	\$ 28.00	\$3,500.00
Staircase Per Updated Sheet			1	LS	\$ 24,500.00	\$24,500.00
<i>511 Eastwood Drive Improvements Subtotal</i>					\$	78,828.00
519 Eastwood Drive						
15		Remove Existing Pullout at Proposed Retaining Wall	1	LS	\$ 4,500.00	\$4,500.00
16		VersaLok Retaining Wall	250	SF	\$ 85.00	\$21,250.00
17		3" Millings Driveway	440	SF	\$ 5.50	\$2,420.00
18		Safety Rail (Includes 14 LF of Rail for Stairs)	62	LF	\$ 124.00	\$7,688.00
19		Concrete Staircase	1	LS	\$ 8,500.00	\$8,500.00
<i>519 Eastwood Drive Improvements Subtotal</i>					\$	44,358.00
527 Eastwood Drive						
20		Remove Existing Pullout at Proposed Retaining Wall	1	LS	\$ 7,000.00	\$7,000.00

Bidding Schedule

Eastwood Drive Parking Improvements

CIP #2410-001						
Line #	Item #	Description	Qty	Unit	Unit Cost	Amount
21		VersaLok Retaining Wall	200	SF	\$ 85.00	\$17,000.00
22		Residential Concrete Driveway	290	SF	\$ 32.00	\$9,280.00
23		Safety Rail	49	LF	\$ 124.00	\$6,076.00
527 Eastwood Drive Improvements Subtotal					\$	39,356.00
535 Eastwood Drive						
23		Remove Existing Pullout at Proposed Retaining Wall	1	LS	\$ 11,000.00	\$11,000.00
24		Concrete Retaining Wall	43	LF	\$ 1,400.00	\$60,200.00
25		3" Decomposed Granite Driveway	360	SF	\$ 6.50	\$2,340.00
26		Safety Rail	43	LF	\$ 124.00	\$5,332.00
535 Eastwood Drive Improvements Subtotal					\$	78,872.00
Total Bid Amount			\$		348,614.00	

TOTAL BID AMOUNT:

Three Hundred and Fourty Eight Thousand Six Hundred and Fourteen

Dollars

(In Written Words)

Fann Contracting Inc.

Company Name

Derek Kack

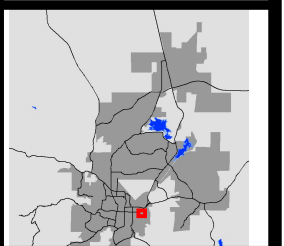
Signature of Company Official

12/12/24

Date Signed

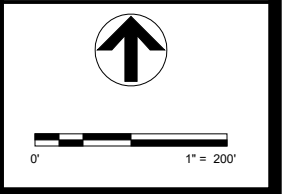
Estimator/Project Manager

Title



**EASTWOOD DRIVE
PARKING IMPROVEMENTS
VICINITY MAP**

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The City of Prescott





TO: MAYOR AND CITY COUNCIL
AGENDA: January 28 Voting Meeting
DATE: January 28, 2025
DEPT: Community Development
ITEM #: 9.C
SUBJECT: Adoption of Ordinance No. 2025-1881 Approving LDC24-001 a Proposed Amendment to the Land Development Code Affecting Accessory Dwelling Units.

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE CITY OF PRESCOTT'S LAND DEVELOPMENT CODE SECTION 2.5.6/GUEST QUARTERS TO ALLOW FOR ACCESSORY DWELLING UNITS (ADUS) TO BE RENTED LONG-TERM SUBJECT TO REQUIREMENTS LISTED WITHIN ARTICLE 2.5.6; ADDITION OF DEFINITION FOR ADUS UNDER LDC TABLE 11.2.5/GENERAL TERMS

ITEM SUMMARY

This item is for the approval of a proposed amendment to the City's Land Development Code (LDC) regarding Accessory Dwelling Units (ADUs) to comply with changes in state law. The current language of the LDC does not permit occupancy of these structures except by guests of the resident family of the primary residence.

BACKGROUND

The City's LDC contains regulations for accessory dwelling units that have now been preempted by the state. This proposed amendment seeks to comply with the Arizona Revised State Statute. Council can choose to adopt changes to the code today, or deny the ordinance and allow for a holistic analysis in the next fiscal year.

Council first heard this item at the November 5, 2024 Voting Meeting. At that time, Council asked staff to revisit three particular aspects of the proposed code update:

1. Sub-metering - Change proposed amendment language from "encouraged" to "required" - this is now reflected in the proposed ordinance text;
2. Parking - Multiple members of Council requested that ADUs be required to provide at least one parking space per ADU tenant. Per the statute, ARS 9-461.18(B)3: "A municipality may not do any of the following: Require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require payment of fees instead of additional parking." To comply with statute, staff ensured that ADUs were exempt from the parking requirements.
3. Public street improvements - Council commented that some existing ADUs are being accessed off of alleys that are either not maintained well, or are not large enough. Per the statute, ARS 9-461.18(B)7: The City may not "Require improvements to public streets as a condition of allowing an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit." In light of this provision, no further changes were made to the proposed amendment.

Much of the conversation at the last Council meeting revolved around the merits of allowing ADUs for long-term rental as a means to contribute to workforce housing supplies and how to appropriately balance this need with safeguarding neighborhood character. Although the points raised are worthy of discussion, the point was made moot by the following provision in the new law (ARS 9-461.18.B.1): "A municipality may not... Prohibit the use or advertisement of either the single-family dwelling or any accessory dwelling unit located on the same lot or parcel as separately leased long-term rental housing."

By law, Council does not have the option to deny the long-term rental of ADUs. The decision before Council is whether now is or is not the time to update the LDC to reflect the new law. Staff understands that legislation may be considered in the current session to amend the current law and a more holistic review of the LDC will be included in the requested budget for FY26.

Staff seeks direction from Council on whether or not they would prefer to update code as proposed in the attached ordinance, update the code through the holistic review in the upcoming fiscal year, or do nothing at this time.

FINANCIAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDED ACTION

MOVE to adopt OR adopt with modifications OR deny Ordinance No. 2025-1881

ATTACHMENTS

1. Ordinance No. 2025-1881
2. Ord 2025-1881- Exhibit A- Proposed LDC Text Amendments for ADUs
3. LDC Amendments Presentation

ORDINANCE NO. 2025-1881

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE CITY OF PRESCOTT'S LAND DEVELOPMENT CODE SECTION 2.5.6/GUEST QUARTERS TO ALLOW FOR ACCESSORY DWELLING UNITS (ADUS) TO BE RENTED LONG-TERM SUBJECT TO REQUIREMENTS LISTED WITHIN ARTICLE 2.5.6; ADDING A DEFINITION FOR ADUS UNDER LDC TABLE 11.2.5/GENERAL TERMS; AND PROVIDING A SEVERANCE PROVISION

RECITALS:

WHEREAS, the Planning and Zoning Commission of the City of Prescott has held a public hearing regarding said text amendments; and

WHEREAS, the City Council of the City of Prescott has determined that said text amendments would be in the best interest of public necessity, interest, convenience and general welfare.

WHEREAS, the requirements of Section 9.12 of the City of Prescott *Land Development Code* have been complied with.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. That the text amendments contained in Exhibit A are herewith adopted.

SECTION 2. SEVERANCE CLAUSE: That the provisions of this Ordinance and the Code and Code Amendments it incorporates are hereby declared to be severable; and, if any section, sentence, clause or phrase of this Ordinance, or any Code and Code Amendments that it incorporates shall, for any reason, be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance and the Code and Code Amendments it incorporates, but shall remain in effect, it being the legislative intent that this Ordinance and the Code and Code Amendments it incorporates shall stand, notwithstanding the invalidity of any part thereof.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott on this ____ day of January 2025.

PHILIP R. GOODE, Mayor

ATTEST:

APPROVED AS TO FORM:

SARAH M. SIEP, City Clerk

JOSEPH D. YOUNG, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
 County of Yavapai) ss.

I, the undersigned Sarah M. Siep, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Ordinance No. 2025-1881 is a true, correct and accurate copy of Ordinance No. 2025-1881 passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the _____ day of _____, 2025, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 2025.

Seal

 City Clerk

Exhibit A

***Strikethrough represents text to be deleted and underlined represents text to be inserted**

2.5.2 General

B. For residential uses within residential zoning districts, accessory uses and structures must be subordinate to the principal use and structure on the subject lot in terms of area, extent and purpose. The total gross floor area of all accessory structures on a lot shall not exceed 600 sq. feet or 50 percent of the total gross floor area of the principal structure on the lot, whichever is greater. The provisions of this paragraph shall not apply to agricultural or commercial/industrial uses.

2.5.6 Guest Quarters & ADUs

Guest quarters/Accessory Dwelling Units (ADUs) may be attached or detached from the principal single-family dwelling unit and shall be considered accessory use to such a dwelling unit (principal use). ~~All guest quarters~~ These accessory structures shall be subject to the following standards, unless otherwise restricted by state statute (e.g., ARS 9-461.18):

- A. ~~Guest quarters~~ They may be attached or detached from the principal single-family dwelling.
- B. ~~Guest quarters~~ They shall be subject to the size limitations of Sec. 2.5.2B.
- ~~C. Guest quarters may be utilized by guests and persons employed on site by the resident family of the principal dwelling and may not be rented separately from the principal dwelling unit.~~
- C. Detached structures ~~guest quarters~~ shall meet all development standards generally applicable to accessory buildings or structures, including minimum building setbacks and building height.
- D. ~~Guest Quarters~~ These structures and the primary residence shall share utilities. Separate utility meters shall not be allowed. Private submeters are required to promote conservation.
- E. ~~Guest Quarters~~ They include a kitchen. ~~However, such quarters shall not be utilized as separate rental units.~~
- F. One off-street parking space shall be required for each guest quarter, in addition to that required for the primary dwelling unit. The additional required parking space shall be located on the same lot as the primary dwelling unit. Tandem parking shall be allowed.
- G. Where 2 complete dwelling units are attached to each other on the same lot, they shall be considered a Duplex, without consideration to the relative size of each attached unit. A Duplex shall meet all development standards for the district, including minimum building setbacks and limitations on overall density.

Exhibit A

11.2.5 General Terms

Insert alphabetically

Term	Definition
<u>Accessory Dwelling Unit (ADU)</u>	<u>A smaller, independent residential dwelling unit located on the same single-family zoned lot as an existing single-family home. ADUs can be attached or detached to the primary single-family home.</u>



Proposed LDC Update: ADU Language

CHELSEA WALTON
COMMUNITY DEVELOPMENT DIRECTOR

January 28th, 2025
City Council Meeting



Overview



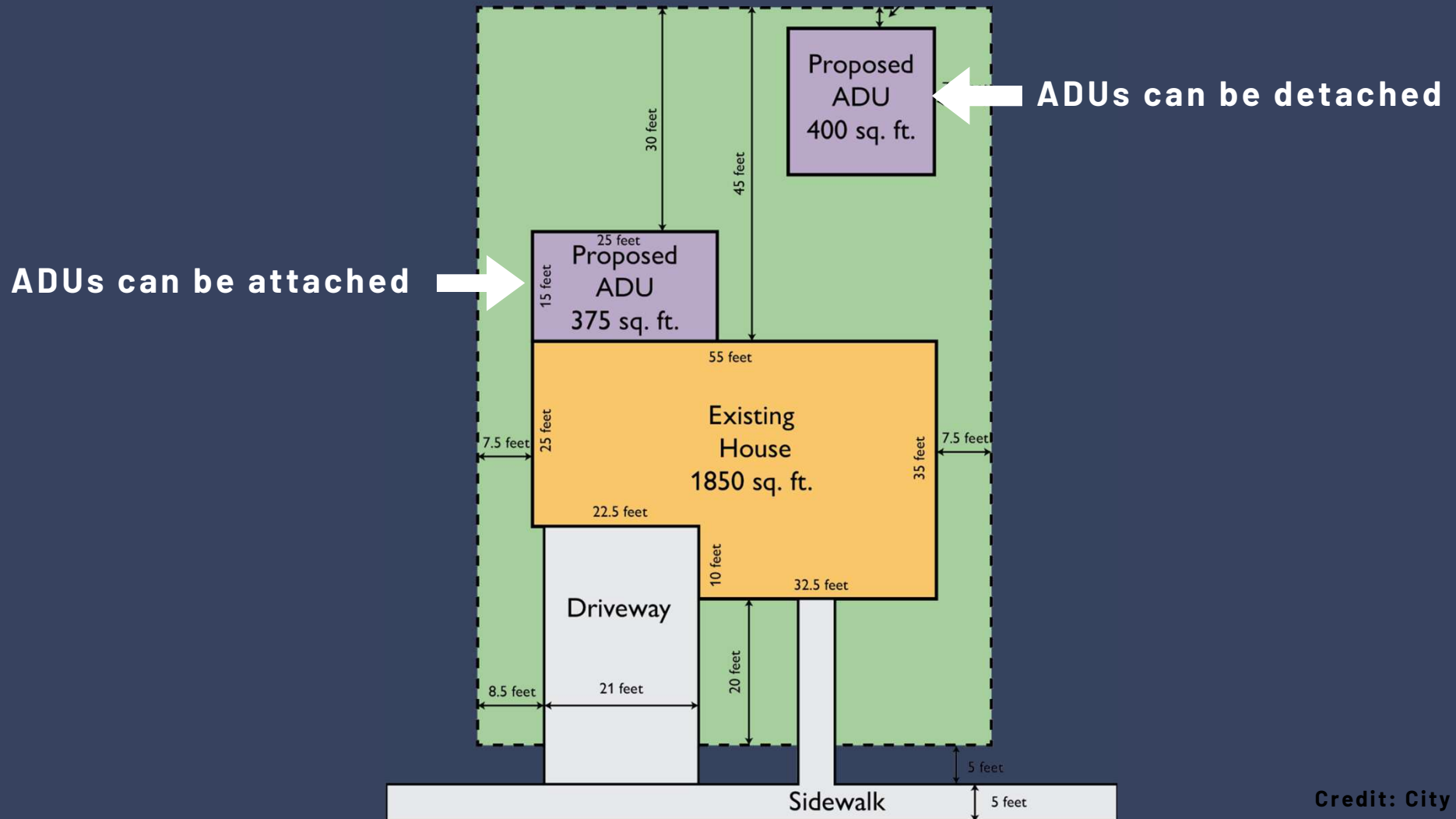
- What are Accessory Dwelling Units?
- The Issues Presented by State Statute
- Available Options
- Recommended Action

ARIZONA REVISED STATE STATUTE 9-461.18.H.1:

"Accessory dwelling unit" means a self-contained living unit that is on the same lot or parcel as a single-family dwelling of greater square footage than the accessory dwelling unit, that includes its own sleeping and sanitation facilities and that may include its own kitchen facilities.



Sample Site Plan



Credit: City of

Issues Presented by State Statute

“A municipality may not do any of the following:”

Prohibit Long-Term Leasing

“Prohibit the use or advertisement of either the single-family dwelling or any accessory dwelling unit located on the same lot or parcel as separately leased long-term rental housing.”



Require Additional Parking

“Require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require payment of fees instead of additional parking.”

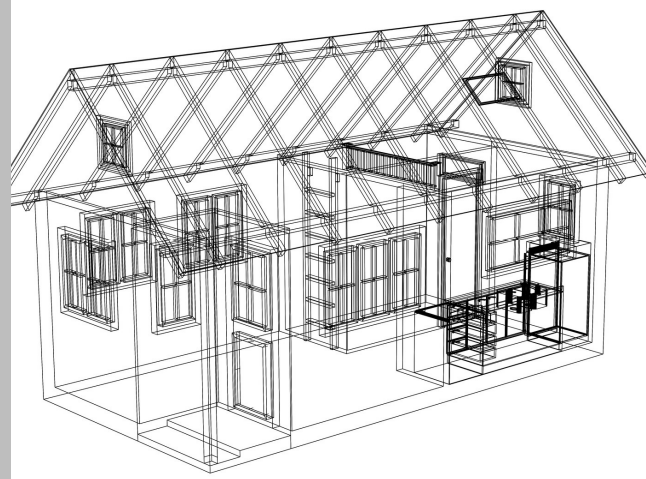


Require Street Improvements

“Require improvements to public streets as a condition of allowing an accessory dwelling unit...”



Available Options



**Update LDC
Section 2.5.6
Today**

**Update LDC
Holistically Later**

Do Nothing

Recommended Action:

1. Move to adopt / adopt with modifications / deny Ordinance No. 2025-1881.