

Contract Award Notice



City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/procurement

Contract Number: T16-110-01

The Bicycle Cellar, Inc.
Attn: John Romero
200 E. 5th Street #105
Tempe AZ 85281

Contract Period 07/01/2016
To
06/30/2021

Phone: 602-312-5136

Vendor Number:

Solicitation/Contract Requirements


This Contract Award Notice is issued for purchase of the **Operation of the Regional Bicycle Center** per the terms, conditions, specifications and requirements of **RFP# 16-110**. The contract shall remain in effect through **06/30/2021** unless extended, renewed or canceled per terms and conditions of **T16-110-01**. It is to be noted that any contracted vendor document(s) that conflict with the language and requirements of the City's solicitation are not acceptable and will void the contract. In addition, contracted vendor is not to begin work or make delivery of awarded items until any and all required insurance and/or performance bonds are posted with the City Procurement Office.


Pricing					
	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Rental per sq. ft. (x 2,000)	\$3.00	\$3.00	\$4.00	\$4.00	\$5.00
Proposed RBC Membership Fees* as applicable					
(Parking Only) Daily Fee	\$2.00	\$2.00	\$3.00	\$3.00	\$4.00
Weekly Fee	N/A	N/A	N/A	N/A	N/A
(Membership) Monthly Fee	\$30.00/\$35.00	\$30.00/\$35.00	\$35.00/\$40.00	\$35.00/\$40.00	\$35.00/\$40.00

Vendor Address Change

If contracted vendor has a change of address for mailing payments and/or for mailing future bid solicitations, it is the vendor's responsibility to notify the City Procurement Officer identified with this contract and to ensure all such mailing address information is kept current. At least once a year, contact the Procurement Officer identified for this contract and ensure your current address has been entered to the City Procurement Office automated system.

Please note that your City of Tempe contract number is **T16-110-01**. This number **must** appear on all receivers, invoices and statements. Payment will be made on a monthly basis following receipt of a monthly itemized statement. Monthly invoices must be segregated by City departments and mailed directly to each City customer department. Invoices **must** be mailed to the following address: City of Tempe, **Transit Services, Attn: Mike Nevarez**, P.O. Box 5002 Tempe, AZ 85280. Statements **must** be mailed to: City of Tempe, **Accounting** PO Box 5002, Tempe, Arizona 85280.


Lisa Goodman, CPPO, CPPB
Procurement Officer
(480) 350-8533


Michael Greene, C.P.M.
Central Services Administrator

THIS IS NOT A PURCHASE ORDER.

All terms and conditions of this Award Document are per the City's Solicitation Document

Addendum to Solicitation



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Issue Date: | 02/23/2016

This addendum will modify and/or clarify:

Solicitation No.: | 16-110

and is

Addendum No. | 1

Procurement Description: | Regional Bicycle Center

Changes should be made as follows:

1. The RFP Due Date/Time is hereby changed to Thursday, March 17, 2016, 3:00 P.M. Local Time.
2. The Pre-Proposal Conference is hereby changed to Thursday, March 3, 2016, 1:00 PM in the Financial Services conference Room, 20 E. 6th Street, 2nd Floor, Tempe, AZ 85281

The balance of the specifications and bid solicitation instructions to remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

The Bicycle Cellar Inc.
NAME OF COMPANY

200 E. 5TH ST. #105
ADDRESS (or PO Box)

Tempe AZ 85281
CITY STATE ZIP

JOHN M. ROMERO / FOUNDR
BY NAME (please print) TITLE

602-312-5136
TELEPHONE

[Signature]
AUTHORIZED SIGNATURE

Addendum to Solicitation



City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/procurement

Issue Date: | 03/08/2016

This addendum will modify and/or clarify:

Solicitation No.: | 16-110

and is

Addendum No. | 2

Procurement Description: | Regional Bicycle Center

Changes should be made as follows:

1. The RFP Due Date/Time remains on Thursday, March 17, 2016, 3:00 P.M. Local Time.
2. The Attendance List from the Pre-Proposal Conference is included with this addendum as Attachment A.
3. A copy of historical electrical costs for a period of 12 months is included with this addendum as Attachment B.
4. A copy of the Tempe Transportation Modified Green Building Policy is included with this addendum as Attachment C.
5. Page 21, Scope of Work, Community Services, Change the last bullet to read "Provide education concerning free bicycle registration (local and or national) and facilitate the registration process to any degree possible."
6. Page 22, Scope of Work, Responsibilities and Facility Maintenance Provided by Tenant, #6 Change to read "The Tenant shall notify the City immediately regarding the need for any maintenance or repairs necessary to maintain the interior of the buildings in a state of repair to meet City Standards including painting, floor care, plumbing, electrical and building care."
7. Page 22, Scope of Work, Responsibilities and Facility Maintenance Provided by Tenant, #8 Change to read "The Tenant shall maintain and clean the RBC and assist with keeping the immediate surround premises tidy and free of debris. Any cleaning needs that exceed picking up debris should be directed to the City. The Tenant must remove all trash generated by or as a result of operations. The RBC must be maintained in a clean, attractive and inviting manner for the public.
8. Add: Page 23, Scope of Work, Responsibilities and Facility Maintenance Provided by the City, #8 The City shall provide all maintenance to the bicycle parking racks beyond inspecting them any needed maintenance repair, loose parts, and tightening any fasteners as needed.
9. Page 24, Scope of Work, Signage, #2 Change to read "The Tenant is required to post additional signage indicating the hours of operations and services provided. The Tenant is required to give each patron a list of the rules and safety information to membership subscribers."
10. Page 24, Scope of Work Signage, #3 Change to read "All posted signs in the RBC must be of professional quality and all signs and printed materials must be approved by the City."
11. Page 25, Proposal Format, #5 Change Bullet F. to read "How long will it take you to install the required concession equipment and become fully operational after award of the contract, based on a tentative award date of April 21, 2016?"

Attachment B

Account 536716282

Meter Q23555

APS Bill Date	Days	Total Charges
03/16/2015	29	\$256.38
04/14/2015	29	\$244.91
05/13/2015	31	\$293.53
06/12/2015	30	\$282.77
07/14/2015	30	\$272.00
08/12/2015	31	\$282.33
09/14/2015	31	\$287.29
10/14/2015	29	\$272.88
11/12/2015	32	\$261.14
12/14/2015	31	\$310.53
01/13/2016	32	\$412.38
02/12/2016	30	\$336.23
		<hr/>
		\$3,512.37

Attachment C

Tempe Transportation Center Modified Green Building Policy

1. **Sustainable Cleaning Products and Materials:** Reduce the environmental impacts of cleaning products, disposable janitorial paper products and trash bags. Implement sustainable purchasing for cleaning materials and products, disposable janitorial paper products and trash bags. Cleaning product and material purchases include purchases for use by in house staff or used by outsourced service providers. Cleaning products and associated materials will meet the following sustainability criteria:
 - a. Cleaning products will meet the Green Seal GS-37 standard if applicable OR if GS-37 is not applicable (e.g., for products such as carpet cleaners, floor finishes or strippers), use products that comply with the California Code of Regulations maximum allowable VOC levels.
 - b. Disposable janitorial paper products and trash bags that meet the minimum requirements of U.S. EPA's Comprehensive Procurement Guidelines.
2. **Occupant Recycling:** The TTC will have in place a building occupant waste reduction and recycling program that addresses the separation, collection and storage of materials for recycling, including (at a minimum) paper, glass, plastics, cardboard/OCC, metals, batteries and fluorescent lamps and diversion from landfill disposal.
3. **Low Environmental Impact Cleaning Equipment Policy:** Maintain the green building policy for the use of janitorial or cleaning equipment that maximizes effective reduction of building contaminants with minimum environmental impact. Cleaning equipment policy specifies that:
 - a. Vacuum cleaners meet the requirements of the Carpet & Rug Institute Green Label Program and are capable of capturing 96% of particulates 0.3 microns in size and operate with a sound level less than 70dBA.
 - b. Hot water extraction equipment for deep cleaning carpets is capable of removing sufficient moisture such that carpets can dry in less than 24 hours.
 - c. Battery-powered equipment is equipped with environmentally preferable gel batteries when feasible.
 - d. Where appropriate, active microfiber technology is used to reduce cleaning chemical consumption and prolong life of disposable scrubbing pads.

The balance of the specifications and bid solicitation instructions remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

THE BICYCLE CELLAR INC
NAME OF COMPANY

200 E. 5TH ST. #105
ADDRESS (or PO Box)

Tempe AZ 85281
CITY STATE ZIP

JOAN M. ROMERO / FOUNDER
BY NAME (please print) TITLE

602-312-7136
TELEPHONE

[Signature]
AUTHORIZED SIGNATURE

REQUEST FOR PROPOSAL

CITY OF TEMPE

REQUEST FOR PROPOSAL : 16-110

RFP ISSUE DATE: 02/09/2016

Commodity Code(s): 042-16, 052-03

PROCUREMENT DESCRIPTION: Regional Bicycle Center

PROPOSAL DUE DATE/TIME: Tuesday, March 15, 2016, 3:00 P.M. Local Time
Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280
Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE: Monday, February 29, 2016 at 10:00 A.M. in the Financial Services Conference Room, 20 E. 6th Street, 2nd Floor, Tempe, AZ 85281

DEADLINE FOR INQUIRIES: Friday, March 4, 2016, 5:00 P.M., Local Time

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Lisa Goodman, CPPO

E-mail: Lisa_goodman@tempe.gov


Phone No: (480) 350-8533

Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page www.tempe.gov/procurement and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, five (5) additional proposal response copies are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.


Michael Greene, C.P.M.
Central Services Administrator

Vendor's Offer

"Return this Section with your Response"

Offeror must complete, sign and submit an original of this form to the City Procurement Office with the proposal response. An unsigned "Vendor's Offer", late proposal response, and/or a materially incomplete response will be considered nonresponsive and rejected. Offeror is to type or legibly write in ink all information required below.

Company Name: <u>THE BICYCLE CELLAR, INC</u>	
Company Purchase Order Mailing Address:	
Street Address: <u>200 E 5th Street #105</u>	
City, State, Zip: <u>TEMPE AZ 85281</u>	
Contact Person: <u>JOHN ROMERO</u>	Phone Number: <u>602 312 5136</u>
E-mail Address: <u>info@thebicyclecellar.com</u>	Cell Number: <u>"</u>
Remit To Information	
Company Name (as it appears on invoice): <u>THE BICYCLE CELLAR</u>	
Company Payment Remit To Address :	
Street Address: <u>200 E 5th Street #105</u>	
City, State, Zip: <u>TEMPE AZ 85281</u>	
Company Tax Information	
If a Tempe-based firm, provide Tempe Transaction Privilege (Sales) Tax No.: <u>121343</u>	
Payment Options	
Will your company accept the City's Master Card for payment?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Will your company accept Payment via ACH (Automated Clearing House) for payment?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

THIS PROPOSAL IS OFFERED BY

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor's Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.

<u>[Signature]</u> Signature of Authorized Offeror	<u>3-17-2016</u> Date
<u>JOHN M. ROMERO</u> Print or Type Name of Authorized Individual	<u>FOUNDER</u> Title of Authorized Individual

INSTRUCTIONS TO PROPOSERS

Failure to follow these instructions shall result in rejection of proposal for non-responsiveness or cancellation of any Contract awarded.

1. **Preparation of Proposal:**
 - A. Proposals shall be submitted to the City of Tempe (“City”) in the sequence specified herein, on the forms attached hereto, including Vendor’s Offer, Form 201-B (RFP).
 - B. All proposals shall be submitted on the forms provided in this Request for Proposal, signed by an authorized signer and returned with the proposal response to the City.
 - C. Completed and signed proposal forms for offer, acceptance and any solicitation amendments shall be signed by an authorized individual. Such proposal constitutes an irrevocable Offer to sell the good and/or service specified herein. Offeror shall submit all additional data, documentation, or information as requested by the City, signifying its intent to be bound by the terms of the Request for Proposal.
 - D. Negligence in preparation of a proposal confers no right of withdrawal. Offeror is solely responsible for seeking clarification of any requirement and presenting accurate information in the proposal response. The City shall not reimburse any costs for a proposal, or its submission, presentation or withdrawal, for any reason.
 - E. Offeror shall identify each subcontractor to be utilized in the services and/or work set forth herein, in the proper form as indicated.
2. **Late, Unsigned and/or Incomplete Proposal:** A late, unsigned and/or materially incomplete proposal will be considered nonresponsive and rejected.
3. **Inquiries:** Questions regarding this Request for Proposal shall be directed to the City Procurement Officer identified on the cover page of this document, unless another City contact is specifically named. Inquiries shall be submitted in writing, identifying the appropriate Request for Proposal’s number, page and paragraph at issue. **PLEASE NOTE: Offeror must not place the Request for Proposal’s number on the outside of an envelope containing questions.** Oral responses provided by the City shall have no binding effect or legal effect. Inquiries should be submitted no later than ten (10) days before proposal due date/time. Those received within ten (10) days of the proposal due date/time shall not be considered. The City reserves the right to contact Offerors to obtain additional information for use in evaluating proposal and solicitation requirements.
4. **Proposal Conference:** If a proposal conference is scheduled, Offeror shall attend the conference to seek clarification of any points of confusion or requirements at issue.
5. **Withdrawal of Proposal:** At any time before the specified proposal due date and time, an Offeror may withdraw its proposal by way of written correspondence from the Offeror or its authorized representative.
6. **Proposal Addenda:** Receipt and acceptance of a Request for Proposal Addendum shall be acknowledged by signing and returning the document either with the vendor’s proposal response or by separate envelope prior to proposal due date/time. Failure to sign and return an addendum prior to the proposal due date/time may result in the proposal being considered nonresponsive to that portion of the Request for Proposal and may result in rejection.
7. **Evaluation:** The City shall determine whether a proposal meets the specifications and requirements of this Request for Proposal, at its sole discretion, and reject any proposals not meeting the intent or requirements set forth therein. The City reserves the right to reject any and all proposals.

8. **Payment:** For a single requirement purchase, the City will make an effort to remit payment within thirty (30) calendar days from receipt and approval of acceptable products, materials and/or services and approval of correct invoice. For ongoing term Contract purchases, the City will make an effort to remit payment within thirty (30) calendar days from approval of monthly statement.
9. **Discounts:** Payment discounts periods shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. The City shall be entitled to receive any discounts offered by Offeror, if payment is made within the discount period.
10. **Compliance with City Solicitation Requirements:** Unless stated otherwise in this Request for Proposal, the City reserves the right to award by individual line item, by group of items, or as a total at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this Request for Proposal.
11. **Award of Contract:** A proposal shall constitute a binding Offer to Contract with the City based on the terms, conditions and specifications contained in this Request for Proposal. An Offeror shall become a Contractor only upon execution of a formal Contract from the City Procurement Office ("Contract"). Unless this Request for Proposal includes separate contract document(s) or requires the Offeror to submit a contract for review, a contract shall be formed when the City Procurement Office provides a written notice of award or a purchase order to the successful Offeror. All items and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Proposals that take exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the vendor's Offer to be considered non-responsive and rejected. Exceptions will be evaluated on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification set forth herein.
12. **Taxes:** All materials, equipment and/or products shall be proposed as F.O.B. City, prepaid. Unless specified herein, sales, use or federal excise tax shall not be included in proposal pricing. The City is exempt from payment of federal excise tax. For proposal evaluation, transaction (sales) privilege tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at www.tempe.gov/salestax.
13. **Payment by City Procurement Card:** The City Procurement Office may elect to remit payment through the use of a City procurement card. Each Offeror may indicate on the Price Sheet of this Request for Proposal its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a proposal.
14. **Proposal Results:** Offerors may attend the scheduled proposal opening at which the name of each Offeror will be publicly read. All other information contained in the proposals shall be kept confidential until contract is awarded. After award of contract, an appointment may be made with the City Procurement Officer to review proposal documents. Formal Contract award results shall be placed on the Procurement Office web page (www.tempe.gov/procurement) and posted at the front counter of the Procurement Office at the time the Contract award is approved by the City Council. Award recommendations may also be viewed via the City Clerk's web site normally up to five (5) days prior to the scheduled City Council meeting by visiting (<http://documents.tempe.gov/sirepub/web>).

15. **Protests:** Any actual or prospective Offeror who is aggrieved in conjunction with this Request for Proposal or award may protest the award to the City Procurement Office. A protest based upon alleged improprieties in this Request for Proposal that are apparent before the proposal opening shall be filed prior to the proposal due date/time. A protest concerning an award recommendation must be filed within ten (10) business days after the date of award. Up to five (5) days before award of a contract, the City Procurement Office will post award recommendations on the City Clerks web site at (http://documents.tempe.gov/sirepub/?sort=meet_date) and at the Procurement Office front counter and website for public review (www.tempe.gov/procurement). A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or Contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents, and the form of relief requested. A protest is to be on the protester's company letterhead and signed by the protestor or its authorized representative.
16. **Compliance of Proposal Offeror/Contractor Forms:** Any documents or forms (including separate contract, maintenance agreement or training agreement intended by the Offeror to be utilized in any resulting Contract, must be submitted with proposal. Any documents inconsistent with or taking exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the proposal to be considered as nonresponsive and rejected. No documents will be considered unless submitted with vendor's proposal Offer and approved by the City Procurement Office.
17. **Definitions:** For purposes of this Request for Proposal and resultant Contract, the following definitions apply:
- A. "City" means the municipal corporation of the City of Tempe, Arizona.
 - B. "Code Governance" means unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
 - C. "Contract" means the agreement for the procurement of goods, services, work, construction or concessions.
 - D. "Contractor" means an Offeror responding to a Request for Proposal who has been awarded a Contract with the City.
 - E. "Offer" means a written offer to furnish goods, services, work, materials, construction and/or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
 - F. "Offeror" means a business, entity or person who submits an Offer in response to a competitive solicitation.
 - G. "Public Record" means proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award.
 - H. "Purchase Order" means a document issued by the City Procurement Office directing the Contractor to deliver goods, services, work, materials, construction and/or concessions to the City.
 - I. "Request for Proposal" means a competitive solicitation issued by the City for the procurement of goods, services, work, materials, construction and/or concessions.
18. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if the Offeror's proposed product(s) and/or service(s) is/are capable of performing the function(s) specified in the Request for Proposal.

It is recognized that more than one method may be used to accomplish the sought after task functionality. If Offeror has an alternate method of performing functional tasks, then Offeror shall list such method as an "alternate", and described in full detail within the Proposal. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by the Offeror. Should no Offeror be found totally responsive to all designated Request for Proposal requirements, the City at its option, may either award the Contract to the most responsive Offeror or cancel the Request for Proposal and issue another Request for Proposal for the need under revised specifications.

19. **Technical Questionnaire:** Offeror must complete the Technical Questionnaire portion of this Request for Proposal and provide any documentation required to support the answers to the Questionnaire. Questionnaire items, which are designated as mandatory, are needed to satisfy a required task or performance criteria. Items, which may be listed as desirable, are not required to be responsive to the Request for Proposal and will be relatively evaluated against other proposals in making a final award decision.

If supporting documentation is required, Offeror shall provide the documentation in the sequence set forth in the Request for Proposal and ensure all technical literature and/or narrative explanations fully address the specifics of the question. Vague or disorganized responses that do not allow sufficient information for evaluation purposes may result in rejection of a Proposal.

20. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this Request for Proposals. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in its evaluation. Prices shall not be read. After Contract award, the proposals and the evaluation documentation shall be open for public inspection.
21. **Technical Proposal Opening:** Technical proposals (as received in step one of a two step bidding process) shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in the evaluation. Evaluation documentation to substantiate technical proposal selection(s) shall be open for public inspection.
22. **Proposal Evaluation and Award:** Award(s) shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the Request for Proposal. The City shall be the sole judge as to the acceptability of the products and/or services offered.
23. **Clarifications and Negotiations with Offerors and Revisions to Proposal:** Clarifications may be made with any submitting firm at any time during the evaluation phase of this procurement. Clarifications are not negotiations and may be utilized by the City to ensure thorough and complete understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of negotiations is to allow the City and the Offeror(s) to revise initial Offers through an exchange or series of exchanges. Should the City elect to call for final proposal revisions (best and final Offers), Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiations and revision of proposals, and such revisions may be permitted after submissions and prior to award. In conducting clarifications and negotiations there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such negotiations shall include but not be limited to:

- A. Determine in greater detail such Offeror's qualifications;
 - B. Explore with the Offeror the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
 - C. Determine that the Offeror will make available the necessary personnel and facilities to perform within the required time; and
 - D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
24. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
25. **Public Record:** Proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award. Material portions of the recommended Offer(s) as determined by the City may be posted to the City's web site up to five (5) days prior to the City Council meeting.

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. Offeror agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Offeror further agrees to provide a copy of its antidiscrimination policy to the City's Procurement Officer to demonstrate compliance with TCC section 2-603(5), or attest in writing to its compliance in accordance with the attached Affidavit of Compliance.
 - C. Offeror 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 the submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

- E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- F. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

- A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.
- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;
 - ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

- iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
- iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

- i) Terminate the Contract;
- ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
- iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.

C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity.
20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.
21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
- Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.
22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

- A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.
 - B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.
23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.
24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.
25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
 Attn: Procurement Officer
 20 E. 6th Street (Second Floor)
 PO Box 5002
 Tempe, Arizona 85280

[Contractor's Name]
 [Attn of Offeror Named in Contract]
 [Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.

30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.
34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.

38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 (“Order”);
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.
41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapon’s permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor’s warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City’s satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor
45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.
46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for one hundred twenty (120) days after the proposal due time and date.
3. **Term of Contract:** The term of the Contract shall commence on the date of award and shall continue for a period of five (5) years thereafter, unless terminated, canceled or extended as otherwise provided herein.
4. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for ninety (90) days beyond the stated term. In addition, the City at its option may renew for supplemental terms of up to a maximum of two (2) additional years. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of two (2) years each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
5. **Insurance:**
 - A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.
 - B. **Minimum Limits of Coverage:** Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.

- E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
 - F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
 - G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
 - H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
 - I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
6. **Job Site Requirements and Clean-Up:** Contractor agrees and covenants to adequately protect the work site, adjacent property and the public in all phases of the work and/or services provided herein. Contractor shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. Contractor shall maintain access to all phases of the Project pending inspection by the City or its agent. Contractor hereby agrees to the following as to the job site:
- A. Continually keep the job site free from debris, waste and accumulation of materials;
 - B. Immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary;
 - C. Keep machinery clean and free of weeds and debris;
 - D. Remove all construction stains, smears and debris from finished surfaces;
 - E. Perform site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and,
 - B. Remove all equipment, materials, tools and Contractor's personal property prior to submission of final invoice to the City.

7. **Conduct and Dress Code:** The Contractor's employees shall maintain proper conduct at all times while on City property. Employees shall respect other personnel at the work site. Abusive language, ethnic and racial slurs, sexual comments and jokes, shouting, and gestures toward other personnel will not be tolerated. Any occurrence will result in immediate action with possible dismissal of that employee.

Employees will be neatly dressed with badges or uniforms that identify them as employees of the Contractor.

8. **Safety, Health and Sanitation:** The Contractor shall provide and maintain in a neat, sanitary condition such facility accommodations for the use by their employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code.

The Contractor shall be fully responsible for the safety of their employees, the public and property in connection with the performance of the work covered by this Contract. The Contractor shall provide all safeguards, safety devices and protective equipment and be responsible for taking any needed actions to protect the life and health of their employees and the public during work activity. The Contractor shall also take any necessary actions as directed by the City of Tempe Project Manager to reasonably protect the life and health of employees on this job and others coming into contact with the job site.

Precaution shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State Occupational Safety and Health Acts, and Standards and Regulations promulgated there under.

9. **Protection and Restoration of Property and Landscape:** The Contractor shall be responsible for all damage or injury to public or private property of any character, during the prosecution of the work resulting from any act, omission, neglect, or misconduct in its manner or method of executing the work or at any time due to defective work or materials. The Contractor's responsibility will not be released until the project has been completed and accepted.

If damage is caused by the Contractor, the Contractor shall restore at no cost to the City of Tempe, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or they shall make good such damage or injury in an acceptable manner. Further payments will be withheld until the City of Tempe has inspected the corrected damage or injury and has signed-off the completion and acceptance.

Contractor shall not dump spoils or waste material on private or private public property without first obtaining from the owner written permission for such dumping.

10. **Sub-Contractor(s):** The City reserves the right to approve all sub-contractors. Contractor is responsible for all actions of sub-contractors. Contractor shall name sub-contractors as additionally insured, in addition to the City of Tempe on all required insurance documents.

11. **Materials and/or Equipment:** Materials and/or equipment, furnished by the City will be delivered or made available to the Contractor when necessary. The Contractor will be held responsible for all materials and/or equipment accepted by them and will make good any shortages, deficiencies or damages that may occur after such acceptance.

Scope of Work

The City of Tempe Regional Bicycle Center (RBC) is a regional bicycle commuter parking facility located at 200 E. 5th Street in the Tempe Transportation Center (TTC) at the northwest corner of 5th Street and College Avenue. The Transportation Center offers a variety of mobility choices and amenities to encourage travel that improves air quality, reduces traffic and parking congestion, and enhances the community's livability. This RFP offers the opportunity for a successful proposer to operate the RBC and provide ancillary services in a commercial manner under a Landlord/Tenant relationship. With more than 175 miles of bikeways, major events and new, innovative bike facilities, Tempe is internationally recognized as a Bicycle-Friendly Community. *Bicycling* magazine recently named Tempe the top Arizona bike town. At 4%, Tempe has one of the highest percentages of bicycle commuters in the country and highest in Arizona.

Pre-Proposal Conference

A Pre-Proposal Conference and site visit is scheduled on Monday, February 29, 2016 at 10:00 AM in the Financial Services Conference Room, 20 E. 6th Street, 2nd Floor, Tempe, Arizona 85281. *Attendance is not mandatory, but is highly encouraged.*

Proposers are encouraged to ask questions at the Pre-Proposal Conference, however no verbal answers or information provided at the conference are binding on the City unless issued in writing through a formal addendum. Vendors are encouraged to submit all questions in writing to Lisa Goodman at lisa_goodman@tempe.gov.

Regional Bicycle Center

The RBC is located on the ground floor of the Tempe Transportation Center and has 2,000 square feet of bicycle storage racks, lockers, and restrooms. The main room (maintenance, circulation, and bike rack area) is 1,200 square feet, and the area between the Transit Store and main area is an additional 624 square feet, (See Exhibit A). The desk area is approximately 24 lineal feet. There are 112 bicycle storage spaces in the two-tiered bicycle racks installed inside the RBC. In addition, there are four (4) complete changing rooms with a shower, toilet, sink, and space to change. There are 72 lockers that can be secured with individual padlocks just outside the changing areas. There is security personnel assigned 24 hours per day, 7 days per week at the Transportation Center and the RBC also has surveillance cameras overlooking the locker entrance area and the bicycle main parking area. After-hours access for RBC members shall be available through the card access system provided by the City.

Community and Retail Sales/Services

The City is seeking proposals for the operation of the RBC and the provision of bike related services and sales. The RBC is intended to provide safe and secure services for the community that encourages bicycling and operated based on user fees that recover the cost of the services and offers bike related sales and services. The following are community services and functions the City of Tempe envisions provided on its behalf for its residents and visitors:

Community Services:

- Management and promotion of the use of the regional bike parking facility.
- Administration of a fee based membership program that provides secured daily, short and long term bike parking, shower and locker facilities.
- Management of the distribution and control of electronic access cards provided to RBC members. Cards to be provided by the City.
- Member services administration including member registration, reports of usage, membership records and reports and other functions in line with the program as mentioned above as may be requested by the City.
- Development and operation of a web-based registration system for enrolling members. Creation and maintenance of a web page that promotes membership and the use of the facility.
- Creation, production, and distribution of promotional materials promoting the RBC.
- Response to inquiries about the center and services provided.
- Provision of educational programs and training (safety, maintenance) for all levels of bicycle users in partnership with other non-profit community associations or with the City.
- Free registration service for bikes to be included in the national police database.

Proposers are expected to offer and provide retail services to meet the needs of RBC members and the public at large.

Retail Services:

- Sales of bikes, bike parts, and bike equipment
- Bicycle rentals
- Bicycle repair

As previously mentioned the RBC includes a two-tiered bicycle storage system for 112 bikes. The use of the storage system shall be at the discretion of the tenant, however, **NO REQUEST FOR PUBLIC PARKING OR MEMBERSHIP SHALL BE DENIED BASED ON A LACK OF STORAGE SYSTEM CAPACITY CAUSED BY TENANT.**

Hours of Operation

The RBC shall be accessible to the membership with key card access for twenty (20) hours per day, which is consistent with the operation of the Tempe Transit system. The City desires the RBC be staffed for a minimum of eight (8) hours per day (8:00 a.m. to 5:00 p.m.) Monday through Friday. Changes in the hours of operation must be approved by the City.

Responsibilities and Facility Maintenance Provided by Tenant

1. The Tenant shall provide and maintain a clean and safe condition in the RBC. The Tenant shall be responsible for all janitorial maintenance within the RBC and use only green certified cleaning products.
2. The Tenant shall develop and enforce appropriate policies to monitor safety and to ensure that all services are operated in a safe manner at all times.
3. The Tenant shall maintain an adequate and properly trained staff and not employ any person whose conduct or activities are deemed to be offensive or detrimental to the public patronizing the facility.
4. The Tenant shall operate the RBC in a professional manner to the satisfaction of the City and provide supervision at all times.
5. The Tenant shall operate and maintain the RBC and provide all furnishing and equipment necessary to the operation not furnished by the City.
6. The Tenant shall work with the City to maintain the interior of the buildings in a state of repair to meet City standards including painting, floor care, plumbing, electrical and building care.
7. The Tenant shall be responsible for damages to the RBC, bike racks, bathrooms and other City equipment and improvements through negligence on its part or by its employees or customers.
8. The Tenant shall maintain and clean the RBC and surrounding premises. The Tenant must remove all trash generated by or as a result of operations. The RBC must be maintained in a clean, attractive and inviting manner for the public.
9. The Tenant shall not install or keep on the premises any vending machines without approval of the City.
10. The Tenant must obtain approval from the City to change the services offered and any other articles sold on the premises.
11. The Tenant, at the termination of this Agreement, shall clean and repair the facilities to the satisfaction of the City. All Tenant equipment shall be removed and all City equipment shall be in good operating condition.
12. The Tenant shall follow and comply with all applicable City codes and policies.

Regional Bicycle Center Membership Rates

The successful proposer will be responsible for membership enrollment and collection of fees for the RBC. All fees shall be retained by the Tenant. Responsibilities include taking payments for membership, issuing access cards, proper recording of membership, fees, and usage. Membership privileges include access to bicycle storage, showers, restrooms and clothing lockers in addition to other membership amenities provided. Membership fees are to be proposed, but are subject to City approval.

Responsibilities and Facility Maintenance Provided by the City

1. The City shall provide bicycle parking racks, restrooms, lockers and two-thousand (2,000) square feet of building.
2. The City shall maintain the mechanical heating and cooling equipment, roofs and exteriors of the facility.
3. The City shall maintain the electrical fixtures and plumbing fixtures bringing electricity and water to the RBC.
4. The City shall maintain the hot water heaters.
5. The City shall provide pest control outside the RBC.
6. The City shall be responsible for damages to the RBC and equipment owned by the City caused by means beyond the Tenant's control.
7. The City shall issue card key access to the facility.

Utilities

The Tenant is responsible for the cost of electric and telephone utilities. The City must approve in writing the use of any equipment by the Tenant at the RBC prior to its installation and use. The Tenant must cooperate with the City in energy conservation efforts.

Personnel

It is very important to the City that the people using the RBC are treated in a cordial, courteous, polite and professional manner. The Tenant is responsible for its actions and those of its employees, volunteers and guests. Inappropriate conduct toward the public by the Tenant or anyone it is responsible for will be deemed a material breach of this Agreement.

Americans with Disabilities Act (ADA)

The Tenant must comply with the Americans with Disabilities ACT (ADA) regulations and ensure that all services are ADA accessible as appropriate.

Licenses

The Tenant must be bonded and licensed to perform such trades within the City.

Bond

The Tenant must provide a non-revocable Security Bond binding the Tenant to provide faithful performance of the Agreement in the amount of One Thousand Dollars (\$1,000) payable to the City. The Security Bond shall be in the form of an irrevocable letter of credit, certified check, cashier's check or other arrangement agreed upon at the option of the Tenant as may be in the form acceptable to the City. Should the Tenant fail to provide the Security Bond as required, the Tenant will be found in default. The City may apply the Security Bond to any outstanding amounts owed by the Tenant under this Agreement that have not been paid after ten (10) days' notice in writing. The City may apply the Security Bond to any damages to the premises caused by acts of negligence of the Tenant, its agents or employees. In the event that the Agreement is concluded and there are no outstanding obligations owed from the Tenant to the City, any Security Bond given under this Section shall be cancelled or returned to the Tenant upon completion of the contract term.

Default

Should the Tenant at any time be in default in the payment of the agreed monthly rental as herein set forth, or should there be any other default or breach occurring in any of the covenant, promises, undertakings, agreements, or obligations in this instrument to be performed by the Tenant, the City at its option, may terminate this Agreement and may enter upon said demised premises, whether with or without process of law, and take possession of all property therefrom and assert a possessory of landlord's lien for money owed by the Tenant to the City, without the necessity of any notice or demand whatsoever. All rights, title or interest of the Tenant to the demised premises, whether in law or in equity, shall immediately cease and terminate. It is further understood and agreed that the remedies herein set forth are not exclusive and the City may pursue any additional or other remedies provided by law. In the event suit shall be brought by the City for unlawful detainer or premises by the Tenant, or by the breach of any of the covenants, terms or conditions herein contained on the part of the Tenant to be kept and performed, the Tenant agrees to pay the City an additional amount equal to reasonable attorney's fees which should be fixed by the court in such action, and any other collection expenses including court costs. Failure to obtain and keep current any applicable government permits, certificates or licenses shall be deemed a material breach.

Signage

1. The Tenant is required to post permanent signage viewable by the public indicating the name of the Tenant and phone number.
2. The Tenant is required to post additional signage indicating the hours of operations and services provided. The Tenant is required to give each patron a list of the rules and safety information.
3. All signs must be of professional quality and all signs and printed materials must be approved by the City.

Tenant Improvements

The Tenant shall be responsible for all costs and permits required for tenant improvements. All proposed improvements including materials used must be approved by the City or authorized designee.

City Lease or Payments

The Tenant shall pay the City on an annual per sq. ft. basis to be based on 2,000 sq. ft. available for use and operation of the Regional Bicycle Center. Lease payments shall be made to the City monthly.

Terms of Agreement

The term of the Agreement shall be for a five (5) year period beginning on the signature date of the Agreement plus an additional option of one (1), two (2)-year renewal period subject to mutual agreement by the Tenant and the City.

Proposal Format

Listed below is the requested format for your proposal response. The sections below represent the criteria for which your proposal will be evaluated. It is important to address each of the items listed below to enable the City to adequately evaluate your response.

1. Bicycle Industry/Retail Experience

- A. List the number of years your firm has been in the bicycle industry. Include detailed resumes of each individual that will be assigned to this Agreement.
- B. Describe the type of services your firm provides.
- C. List up to three (3) references to which you have provided related bicycle industry experiences/jobs. List a contact name and phone number, dates of services provided and a brief description of services provided.

2. Business/Management Experience

- A. Identify the individual who will be responsible for managing the Regional Bicycle Center.
- B. Describe your procedures for employee hiring, training, supervision and evaluation.
- C. Outline your firm's experience running a business or retail operation.
- D. Customer service experience.
- E. Ability to maintain cleanliness/appearance of facilities.

3. Financial Status

- A. Demonstrate your firm's solvency/responsibility to maintain a long-term agreement with the City and to expend the necessary outlay cost to meet operational and program requirements in a quality manner.
- B. Provide current financial statements of assets and liabilities to include a balance sheet, income statement, and statement of cash flows. Statements or reports reviewed or audited by the CPA firm will receive the greatest credibility for evaluation purposes.
- C. Provide at least two (2) financial references which verify financial history and stability.
- D. Describe the stability of your business relationships.

4. Marketing/Merchandising Experience

- A. Describe in detail your marketing and merchandising approach.
- B. Include the number of years' experience performing merchandising services as it relates this RFP.
- C. Describe creative merchandising ideas and commitments to the Regional Bicycle Center.

5. Methodology for Providing Retail Sales and Services

- A. Provide a description and list of retail items to be sold (bike, parts, etc.). The sale of alcoholic beverages is not permitted at the location.
- B. Provide a list of services and bicycle related operations being proposed, including bicycle rentals, repairs, sales and classes.
- C. Provide a description of your equipment inventory
- D. Do you currently own the equipment and supplies needed to operate the RBC? If not, how will you purchase and/or lease the equipment and supplies to service the agreement.
- E. Provide the number of bicycles that will be available for rental.
- F. How long will it take you to install the required concession equipment and become fully operational after award of a contract, based on a tentative award date of April 21, 2015?

6. Financial Proposal to the City

- A. Amount of rent Proposer will offer the City per square foot based on 2,000 sq. ft.
- B. Proposed RBC membership fee schedule for daily, weekly and monthly membership as applicable.
- C. Anything over and above what the Proposer offers that will benefit the City.

7. Completeness of Proposal and Acceptance of Terms and Conditions

- A. Provide a statement of acceptance of the City's terms and conditions or indicate exceptions taken for the City to review.

1. Bicycle Industry/Retail Experience

A. The Bicycle Cellar has been operating the RBC for the past six and one half years at the Tempe Transportation Center. It is being successfully run by John Romero, Joseph Perez and Thomas Tomczyk.

John Romero has been involved in cycling for 20 + years and is the Co-Founder and Director of The Bicycle Cellar and PHX Bike Lab as well as the COO of Cyclehop / Grid Bike Share. He's also been involved in bicycling as a promoter, coordinator and participant of local cycling events and he has participated in over 50+ cycling races, charity rides and/or tours. John has supported youth cycling workshops and advocacy and is an active member of Phoenix Spokes People.

Joseph Perez has been an avid cyclist for 30 years and is the Co-Founder of The Bicycle Cellar and PHX Bike Lab. He's active in local bicycle advocacy where he's a board member of Tempe Bicycle Action Group and an active member of Phoenix Spokes People. His experiences in the industry include volunteering for youth cycling programs, participating in community cycling events, and as the Bicycle Coordinator for the city of Phoenix, has been directly responsible for the inclusion/installation of bicycle lanes on our city streets. As a daily commuter, his knowledge and experience is an invaluable resource to all Bicycle Cellar members utilizing the facility for their daily commute by bicycle.

Thomas Tomczyk rediscovered bicycle riding as an adult in 1996. He mostly rides for the fun of it. In 2009, after several years as the Vice President of Tempe Bicycle Action Group, he left a career in engineering and took his lifelong tinkering skills and love of bicycles to the bicycle industry where he's felt at home ever since. Tom has been handling day to day operations at The Bicycle Cellar for several years and takes great pride in delivering top notch customer service. Tom is a Bike League certified cycling instructor, well versed in the many facets of why and how people use bicycles. Tom was the driving factor in bringing Bike Valet to major Tempe Beach Park events, where it's remained a staple ever since, eventually becoming the inspiration for the Tempe Bike Corral at Beach Park.

B. The Bicycle Cellar provides state of the art bicycle commuter support services including secure parking, showers, towel service and lockers. In addition, we operate a public bike shop offering retail sales of new and used bicycles, parts, accessories and a full service repair center.

C. References

Reference 1: Katie - WebFilings.com, 480-267-5345, June 2013. Planned and delivered a corporate bike-share solution to WebFilings.com consisting of 6 matched bicycles and keyed alike locks.

Reference 2: John Meredith, 480-234-2988, ongoing dates. John was a long time member of The Bicycle Cellar since nearly day one. He's purchased bicycles from us, had them serviced here and has been an exceptional customer.

Reference 3: Craig Erwin, 480-350-8859, ongoing dates. Craig is another member since day one. We've kept his vintage commuter bicycle in tip top shape over the course of nearly 7 years now.

2. Business/Management Experience

A. The Bicycle Cellar is managed day to day by Thomas Tomczyk with oversight from John Romero and Joseph Perez.

B. Employees must have retail sales experience, with a preference for two years bicycle retail/repair experience. Training includes bicycle assembly/repair /maintenance and safety instruction on all usage of equipment and tools. Employees are instructed how to receive, price and merchandise product. Computer/Cash register usage and sales orders procedures are taught to all employees by management. Supervision of employees is ongoing using various procedures. New employee evaluations are done after 30 days and after 90 days to review performance, attendance and pay. Annual reviews are conducted from that point on, as well as performance and bonus reviews as necessary.

C. Joseph Perez, John Romero and Thomas Tomczyk and have been successfully running The Bicycle Cellar together for over six and one half years. Together they have extensive experience in management, merchandising and bicycle maintenance and repair.

D. Prior to founding The Bicycle Cellar, John Romero provided customer service for a wide variety of commercial photography clients via his Romero Foto business. Prior to managing The Bicycle Cellar, Thomas Tomczyk provided 10 years of direct to client customer service as a software engineer. In the last six and one half years our customer service mission has been simple, provide the best customer service we possibly can. This shows in our review ratings on both Google Places and Facebook.

E. For over six and one half years we've maintained the RBC to the best of our abilities. The member area including showers, restrooms, lockers and common area are cleaned daily. The remainder of the facility is cleaned as necessary to maintain a professional appearance for our members and the general public utilizing our bicycle shop.

3. Financial Status

A. The Bicycle Cellar is currently under contract with the City of Tempe and has been operating since 2009 at the Tempe Transportation Center - 200 E 5th St #105, Tempe, AZ 85281. Security, maintenance of property and compliance of lease requirements and guidelines exemplify our ability to meet the program requirements set by the City of Tempe.

B. Please refer to the pages inserted between this subsection (B) and the next subsection (C) for financial statements requested.

Gross Income July 1 2015 - Present:	\$240,273.29
Net Income (Monthly based on past 3 month average):	\$10,066.99
Assets	
Short Term (Inventory):	\$23,127.00
Long Term (Tools/Fixtures):	\$31,418.00
Liabilities:	
Payroll (Monthly based on past 3 month average):	\$5559.50
Rent (Monthly):	\$666.67
Utilities (Monthly):	\$186.00
Insurance (Monthly):	\$217.54
AP (See outstanding balances owed below):	Varies
Sales Tax (Last Month):	\$1,523.12
Payroll Tax (Monthly based on past 3 month average):	\$1,822.14
Outstanding Balances Owed	
QBP:	\$14,986.45
J&B:	\$3,199.35
Xander Bicycles:	\$4,254.16
Cash on Hand (3/17)	\$9,474.79

The Bicycle Cellar, Inc.
Profit and Loss
January - December 2015

	Total
Income	
Membership Income	479.28
Membership Refunds	-595.02
POS Sales	82,053.36
Rental Income	12,160.88
Retail Income	58,932.49
Sales Tax Collected	5,865.15
Service/Labor Income	10,653.54
Uncategorized Income	154,993.78
Total Income	\$324,543.46
Cost of Goods Sold	
Consignment - Used Bikes	330.00
Repair/Service Supplies	4,803.03
Retail Merchandise	154,867.98
Total Cost of Goods Sold	\$160,001.01
Gross Profit	\$164,542.45
Expenses	
Advertising	3,138.31
Bank Service Charges	530.49
Credit Card Fees	10,666.70
Donations	520.00
Dues and Subscriptions	447.07
Employee Meals	2,023.56
Insurance	
Liability Insurance	1,897.50
Work Comp	1,496.78
Total Insurance	3,394.28
Interest Expense	1,371.68
Janitorial Expense	1,094.06
Licenses and Permits	125.00
Miscellaneous	-3,506.07

	Total
Office Supplies	2,316.42
Parking & Transportation	493.50
Payroll Expenses	
Fees	658.92
Taxes	5,886.59
Wages	80,650.61
Total Payroll Expenses	87,196.12
Postage and Delivery	520.99
Professional Fees	
Accounting	500.00
Total Professional Fees	500.00
Rent	7,486.02
Repairs	
Computer Repairs	58.70
Total Repairs	58.70
Sales Tax Paid	5,865.15
Supplies	2,947.06
Telephone & Internet	2,160.63
Travel & Ent	110.50
Travel	338.60
Total Travel & Ent	449.10
Uncategorized Expense	3,541.75
Uniforms	281.58
Total Expenses	\$133,622.10
Net Operating Income	\$30,920.35
Net Income	\$30,920.35

C. References of financial history and stability are as follows:

1). Stacy Lang - Lang Accounting Services - (602) 574-2167

2). Susan Cahoon - HH Computing, Inc. - (602) 722-9213

D. We've maintained accounts and remained in good standing with the following distributors since our inception in 2009:

Quality Bicycle Products: 6400 W. 105th Street Bloomington, MN 55438
Telephone: (952) 941-9391
Account #102768

J&B Importers: 845 West Brockton Avenue Unit A Redlands CA 92374
Telephone: (602) 329-8156
Account #105269

Kona Bicycles: 2455 Salashan Loop Ferndale, WA, 98248
Telephone: (800) 566-2872
Account #BICCEL-AZ

4. Marketing/Merchandising Experience

A. Marketing of The Bicycle Cellar is a fluid process. We use various mediums including print and online marketing to reach current and prospective customers. We advertise in several Tempe tourism related physical publications. The presence of The Bicycle Cellar on Facebook, Instagram, Twitter and other digital mediums, along with our website, which is well ranked in Google, ensures exposure to a wide online audience. We sponsor and attend several bicycle related community events including Tour de Tempe, Valley Bike Month, Tour de Fat and more.

Our merchandising approach is simple. Maintain a clean, well stocked, well organized facility and provide exceptional customer service at all times.

B. John Romero, Joseph Perez and Thomas Tomczyk have 30 combined years of merchandising experience. Six and one half years directly related to the RBC.

C. We regularly attend bicycle related community events. In addition to these recurring events we regularly organize free one time community education events, community group rides, and other events to increase awareness of not only our business, but to use as an opportunity to educate others of Tempe's commitment to bicyclists and bicycle infrastructure. We've always done our best to be a champion for bicycling in Tempe, and we were recently recognized by Mayor and council for our commitments and contributions in helping Tempe achieve a Gold level Bicycle Friendly Community ranking.

5. Methodology for Providing Retail Sales and Services

A. Items sold at The Bicycle Cellar to maintain and support safe bicycle use for commuting are as follows:

- New & Used Bicycles: \$200.00 - \$1700.00
- Parts (tubes, tires, components, etc): \$1.00 - \$300.00
- Accessories (lights, helmets, bags, locks, etc): \$1.00 - \$200.00
- Bike Rentals: \$20.00 - \$120.00
- Snacks & non alcoholic beverages: \$1.00 - \$4.00

B. The Bicycle Cellar is fully functioning public bike shop. We sell new & used bicycles, accessories, parts and also offer bicycle rentals. We are a repair service center for all brands, makes and models of bicycles. Services include assembly and maintenance of bicycles as well as installation of products purchased on site, or brought in by customers.

Bicycle rentals are available for a daily, weekend or week-long time periods and include cruisers, city bikes and mountain bikes. Helmets, locks, lights and cargo carrying racks are also available.

We organize annual community education events on several topics including bike commuting basics and bicycle repair basics.

Information and assistance is available on the following topics: City of Tempe bicycle registration, maps of bike lanes and safe routes around Tempe, trail maps of local parks and recreation areas suitable for use by both local and visiting cyclists. We also offer instruction for use of public transportation in conjunction with bicycle commuting.

C. The Bicycle Cellar is a complete facility with all the knowledge, tools, equipment and fixtures necessary, and already in place, to operate a commuter support station, retail bicycle shop and service facility with the ability to maintain bicycles of all makes and models.

D. Yes. All equipment and supplies are owned outright by The Bicycle Cellar.

E. We currently have 25 (twenty five) bicycles available for rental.

F. Immediately.

6. Financial Proposal to the City

A. See "Financial Proposal Form" on the next page.

B. See "Financial Proposal Form" on the next page.

C. The Bicycle Cellar and Grid Bikes will engage in a joint internal discussion to propose renting additional space at the TTC.

**Financial Proposal Form
City of Tempe
Regional Bicycle Center**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Annual Rental per sq. ft. (x 2,000)	\$ 3	\$ 3	\$ 4	\$ 4	\$ 5	
Proposed RBC Membership Fees* as applicable						
(PARKING ONLY) Daily Fee	\$ 2	\$ 2	\$ 3	\$ 3	\$ 4	
Weekly Fee	N/A	N/A	N/A	N/A	N/A	
(MEMBERSHIP) Monthly Fee	\$ 30/35	\$ 30/35	\$ 35/40	\$ 35/40	\$ 35/40	

*Fees subject to City approval

The City reserves the right to negotiate the proposed annual rental rate with the Offeror.

7. Completeness of Proposal and Acceptance of Terms and Conditions

A. The Bicycle Cellar accepts the terms and conditions within this proposal.

Proposal Checklist for Submittals

- One signed and complete original of the proposal response, including "Vendor's Proposal Offer" (Form 201-B).
- Five (5) copies of your original proposal response are included.
- Proposal Format Items on pages 25 and 26 have been answered with all supporting documentation and included.
- Financial Proposal Form is completed and included.
- Any addendum(s) have been signed and included.
- Signed and completed Affidavit of Compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5).

Evaluation Criteria

The City's evaluation criteria for this RFP is stated below and additionally explained on pages 25 and 26. The rating/scoring process will be based on written proposal responses to determine the most advantageous offers. Finalists will be invited to interview with the City's evaluation committee for the purpose of clarifying written proposal responses and to furnish any needed insight into the proposal's overall response to the City's RFP. The final rating/scoring will be based on both the written proposal and insights/clarification gained through the interview of the the finalists.

Award Criteria	Weight	X	Rating	=	Points
1. Financial Proposal to the City	40	X	_____	=	_____
2. Bicycle Industry/Retail Experience	15	X	_____	=	_____
3. Financial Status	15	X	_____	=	_____
4. Business/Management Experience	10	X	_____	=	_____
5. Methodology for Providing Retail Sales and Services	10	X	_____	=	_____
6. Marketing/Merchandising Experience	5	X	_____	=	_____
7. Thoroughness/completeness of proposal; Acceptance of the City's Terms and Conditions	5	X	_____	=	_____
8. Quality of Interview and Effectiveness of Proposed Team (if conducted)	10	X	_____	=	_____
			Total	=	_____

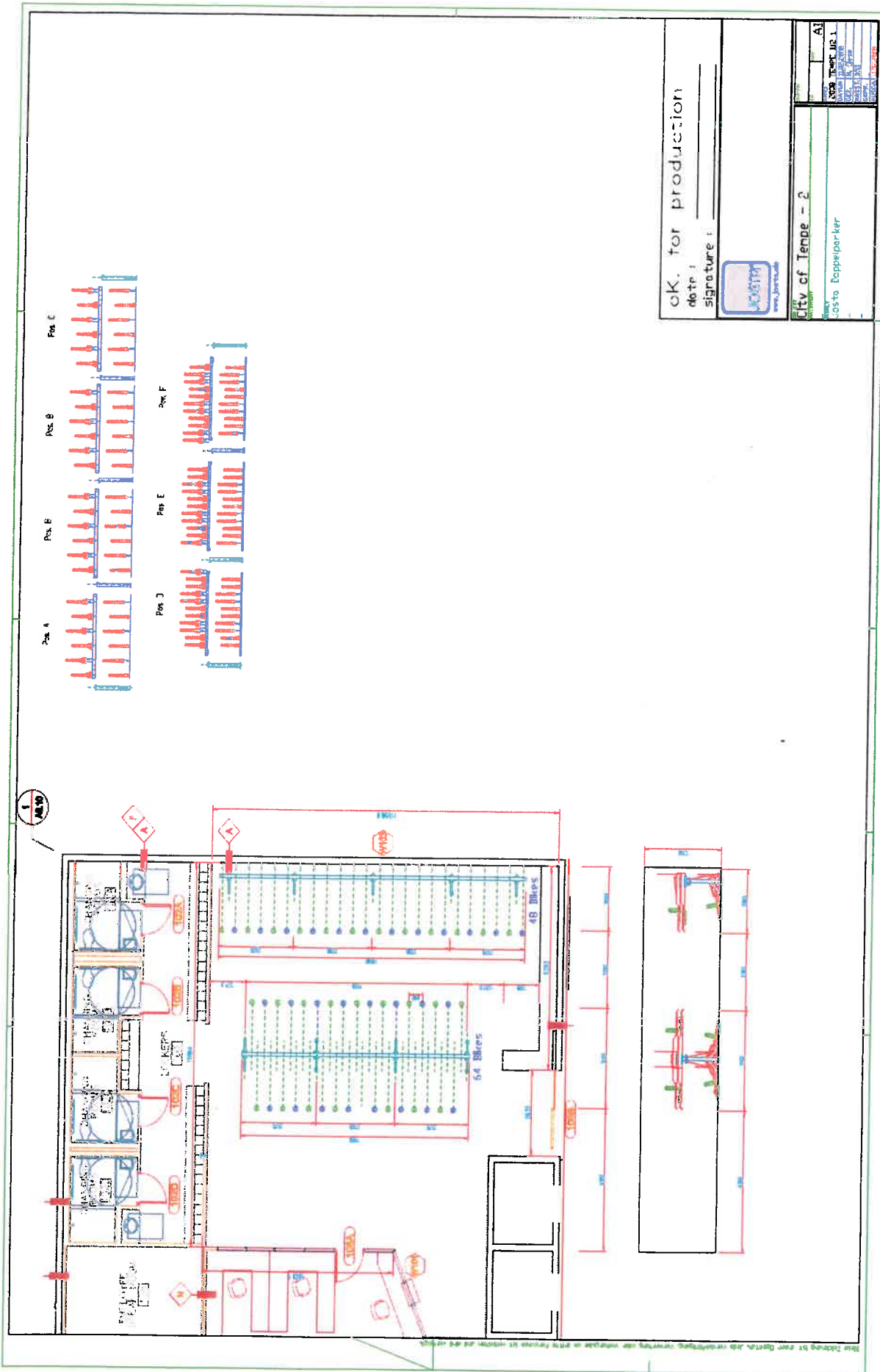
This proposal will be evaluated on a cumulative point system using the rating scale shown below (fractional points may be selected within this range).

Scoring

Outstanding	10
	9
Good	8
	7
	6
Average	5
	4
	3
Poor	2
	1
Not Addressed or Unacceptable	0

To evaluate the cost portion of the above criteria, the City may elect to evaluate each firm on a percentage basis of the lowest cost Offer. The formula would be: (Lowest Priced Offer/Evaluated Firm's Price) X Points Possible = Evaluation Points.

Exhibit A



ok. for production
 date: _____
 signature: _____



City of Tempe - 2
 City of Tempe
 10500 Tempe Mill
 Tempe, AZ 85284
 480.962.2200
 www.tempe.gov



**AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE
CHAPTER 2 ARTICLE VIII SECTION 2-603(5)**

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors shall provide a copy of their antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

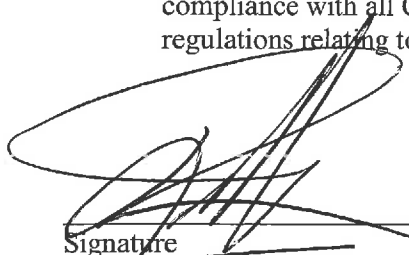
- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

 Current copy of antidiscrimination policy attached.

OR

I hereby certify THE BICYCLE CELLAR (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5), as well as in compliance with all City of Tempe ordinances, state and federal laws, executive orders, rules, and regulations relating to nondiscrimination.



Signature

Date: 3-15-2016

Vonn M. Romero

Print Name

FOUNDER/OWNER

Title

The Bicycle Cellar Inc.

Company

**RFP #16-110 Regional Bicycle Center
Evaluation Committee Score Sheet**

The Bicycle Cellar

Criteria Description	Point Scale			Weight	Possible Points	Committee Scores	
	0-10	0-10	0-10			Score	Weighted Score
Financial Proposal to the City	0-10	0-10	0-10	40	400.00	6	240.00
Bicycle Industry/Retail Experience	0-10	0-10	0-10	15	150.00	9	135.00
Financial Status	0-10	0-10	0-10	15	150.00	7	105.00
Business/Management Experience	0-10	0-10	0-10	10	100.00	9	90.00
Methodology for Providing Retail Sales and Service	0-10	0-10	0-10	10	100.00	8	80.00
Marketing/Merchandising Experience	0-10	0-10	0-10	5	50.00	8	40.00
Thoroughness/completeness of proposal; acceptance of the City's Terms and Conditions	0-10	0-10	0-10	5	50.00	9	45.00
Quality of Interview and Effectiveness of Proposed Team (if conducted)	0-10	0-10	0-10	10	100.00	n/a	
Total				110	1,100		735.00

Comments

Financial proposal to the City equates to \$38,000 in rent over 5 years plus electrical costs will be paid directly by the Tenant (approx. \$3,500/yr.). Tenant has been operating Bicycle Center since it started. Tenant offers commuter support services, retail sales and a repair center. Key individuals have been running the bicycle center for over 6 years. Financial reports are good but are not audited or reviewed by CPA. Marketing is wide spread and appropriate for the target market for the center and its services. Methodology is good. Firm offers 25 rental bicycles. Proposal is complete and firm accepts all of the City's terms and conditions.

REQUEST FOR PROPOSAL

CITY OF TEMPE

REQUEST FOR PROPOSAL : 16-110

RFP ISSUE DATE: 02/10/2016

Commodity Code(s): 042-16, 052-03

PROCUREMENT DESCRIPTION: **Regional Bicycle Center**

PROPOSAL DUE DATE/TIME: **Tuesday, March 15, 2016, 3:00 P.M. Local Time**
Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280
Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE: Monday, February 29, 2016 at 10:00 A.M. in the Financial Services Conference Room, 20 E. 6th Street, 2nd Floor, Tempe, AZ 85281

DEADLINE FOR INQUIRIES: Friday, March 4, 2016, 5:00 P.M., Local Time

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Lisa Goodman, CPPO

E-mail: Lisa_goodman@tempe.gov

Phone No: (480) 350-8533

Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page www.tempe.gov/procurement and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, five (5) additional proposal response copies are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.

Michael Greene

Michael Greene, C.P.M.
Central Services Administrator

Vendor's Offer

“Return this Section with your Response”

Offeror must complete, sign and submit an original of this form to the City Procurement Office with the proposal response. An unsigned “Vendor’s Offer”, late proposal response, and/or a materially incomplete response will be considered nonresponsive and rejected. Offeror is to type or legibly write in ink all information required below.

Company Name: _____	
Company Purchase Order Mailing Address:	
Street Address: _____	
City, State, Zip: _____	
Contact Person: _____	Phone Number: _____
E-mail Address: _____	Cell Number: _____
<u>Remit To Information</u>	
Company Name (as it appears on invoice): _____	
Company Payment Remit To Address :	
Street Address: _____	
City, State, Zip: _____	
<u>Company Tax Information</u>	
If a Tempe-based firm, provide Tempe Transaction Privilege (Sales) Tax No.: _____	
<u>Payment Options</u>	
Will your company accept the City’s Master Card for payment?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Will your company accept Payment via ACH (Automated Clearing House) for payment?	Yes <input type="checkbox"/> No <input type="checkbox"/>

THIS PROPOSAL IS OFFERED BY

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor’s Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.

Signature of Authorized Offeror

Date

Print or Type Name of Authorized Individual

Title of Authorized Individual

INSTRUCTIONS TO PROPOSERS

Failure to follow these instructions shall result in rejection of proposal for non-responsiveness or cancellation of any Contract awarded.

1. **Preparation of Proposal:**

- A. Proposals shall be submitted to the City of Tempe (“City”) in the sequence specified herein, on the forms attached hereto, including Vendor’s Offer, Form 201-B (RFP).
- B. All proposals shall be submitted on the forms provided in this Request for Proposal, signed by an authorized signer and returned with the proposal response to the City.
- C. Completed and signed proposal forms for offer, acceptance and any solicitation amendments shall be signed by an authorized individual. Such proposal constitutes an irrevocable Offer to sell the good and/or service specified herein. Offeror shall submit all additional data, documentation, or information as requested by the City, signifying its intent to be bound by the terms of the Request for Proposal.
- D. Negligence in preparation of a proposal confers no right of withdrawal. Offeror is solely responsible for seeking clarification of any requirement and presenting accurate information in the proposal response. The City shall not reimburse any costs for a proposal, or its submission, presentation or withdrawal, for any reason.
- E. Offeror shall identify each subcontractor to be utilized in the services and/or work set forth herein, in the proper form as indicated.

2. **Late, Unsigned and/or Incomplete Proposal:** A late, unsigned and/or materially incomplete proposal will be considered nonresponsive and rejected.

3. **Inquiries:** Questions regarding this Request for Proposal shall be directed to the City Procurement Officer identified on the cover page of this document, unless another City contact is specifically named. Inquiries shall be submitted in writing, identifying the appropriate Request for Proposal’s number, page and paragraph at issue. **PLEASE NOTE: Offeror must not place the Request for Proposal’s number on the outside of an envelope containing questions.** Oral responses provided by the City shall have no binding effect or legal effect. Inquiries should be submitted no later than ten (10) days before proposal due date/time. Those received within ten (10) days of the proposal due date/time shall not be considered. The City reserves the right to contact Offerors to obtain additional information for use in evaluating proposal and solicitation requirements.

4. **Proposal Conference:** If a proposal conference is scheduled, Offeror shall attend the conference to seek clarification of any points of confusion or requirements at issue.

5. **Withdrawal of Proposal:** At any time before the specified proposal due date and time, an Offeror may withdraw its proposal by way of written correspondence from the Offeror or its authorized representative.

6. **Proposal Addenda:** Receipt and acceptance of a Request for Proposal Addendum shall be acknowledged by signing and returning the document either with the vendor’s proposal response or by separate envelope prior to proposal due date/time. Failure to sign and return an addendum prior to the proposal due date/time may result in the proposal being considered nonresponsive to that portion of the Request for Proposal and may result in rejection.

7. **Evaluation:** The City shall determine whether a proposal meets the specifications and requirements of this Request for Proposal, at its sole discretion, and reject any proposals not meeting the intent or requirements set forth therein. The City reserves the right to reject any and all proposals.

8. **Payment:** For a single requirement purchase, the City will make an effort to remit payment within thirty (30) calendar days from receipt and approval of acceptable products, materials and/or services and approval of correct invoice. For ongoing term Contract purchases, the City will make an effort to remit payment within thirty (30) calendar days from approval of monthly statement.
9. **Discounts:** Payment discounts periods shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. The City shall be entitled to receive any discounts offered by Offeror, if payment is made within the discount period.
10. **Compliance with City Solicitation Requirements:** Unless stated otherwise in this Request for Proposal, the City reserves the right to award by individual line item, by group of items, or as a total at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this Request for Proposal.
11. **Award of Contract:** A proposal shall constitute a binding Offer to Contract with the City based on the terms, conditions and specifications contained in this Request for Proposal. An Offeror shall become a Contractor only upon execution of a formal Contract from the City Procurement Office ("Contract"). Unless this Request for Proposal includes separate contract document(s) or requires the Offeror to submit a contract for review, a contract shall be formed when the City Procurement Office provides a written notice of award or a purchase order to the successful Offeror. All items and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Proposals that take exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the vendor's Offer to be considered non-responsive and rejected. Exceptions will be evaluated on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification set forth herein.
12. **Taxes:** All materials, equipment and/or products shall be proposed as F.O.B. City, prepaid. Unless specified herein, sales, use or federal excise tax shall not be included in proposal pricing. The City is exempt from payment of federal excise tax. For proposal evaluation, transaction (sales) privilege tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at www.tempe.gov/salestax.
13. **Payment by City Procurement Card:** The City Procurement Office may elect to remit payment through the use of a City procurement card. Each Offeror may indicate on the Price Sheet of this Request for Proposal its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a proposal.
14. **Proposal Results:** Offerors may attend the scheduled proposal opening at which the name of each Offeror will be publicly read. All other information contained in the proposals shall be kept confidential until contract is awarded. After award of contract, an appointment may be made with the City Procurement Officer to review proposal documents. Formal Contract award results shall be placed on the Procurement Office web page (www.tempe.gov/procurement) and posted at the front counter of the Procurement Office at the time the Contract award is approved by the City Council. Award recommendations may also be viewed via the City Clerk's web site normally up to five (5) days prior to the scheduled City Council meeting by visiting (<http://documents.tempe.gov/sirepub/web>).

15. **Protests:** Any actual or prospective Offeror who is aggrieved in conjunction with this Request for Proposal or award may protest the award to the City Procurement Office. A protest based upon alleged improprieties in this Request for Proposal that are apparent before the proposal opening shall be filed prior to the proposal due date/time. A protest concerning an award recommendation must be filed within ten (10) business days after the date of award. Up to five (5) days before award of a contract, the City Procurement Office will post award recommendations on the City Clerks web site at (http://documents.tempe.gov/sirepub/?sort=meet_date) and at the Procurement Office front counter and website for public review (www.tempe.gov/procurement). A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or Contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents, and the form of relief requested. A protest is to be on the protester's company letterhead and signed by the protester or its authorized representative.
16. **Compliance of Proposal Offeror/Contractor Forms:** Any documents or forms (including separate contract, maintenance agreement or training agreement intended by the Offeror to be utilized in any resulting Contract, must be submitted with proposal. Any documents inconsistent with or taking exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the proposal to be considered as nonresponsive and rejected. No documents will be considered unless submitted with vendor's proposal Offer and approved by the City Procurement Office.
17. **Definitions:** For purposes of this Request for Proposal and resultant Contract, the following definitions apply:
- A. "City" means the municipal corporation of the City of Tempe, Arizona.
 - B. "Code Governance" means unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
 - C. "Contract" means the agreement for the procurement of goods, services, work, construction or concessions.
 - D. "Contractor" means an Offeror responding to a Request for Proposal who has been awarded a Contract with the City.
 - E. "Offer" means a written offer to furnish goods, services, work, materials, construction and/or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
 - F. "Offeror" means a business, entity or person who submits an Offer in response to a competitive solicitation.
 - G. "Public Record" means proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award.
 - H. "Purchase Order" means a document issued by the City Procurement Office directing the Contractor to deliver goods, services, work, materials, construction and/or concessions to the City.
 - I. "Request for Proposal" means a competitive solicitation issued by the City for the procurement of goods, services, work, materials, construction and/or concessions.
18. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if the Offeror's proposed product(s) and/or service(s) is/are capable of performing the function(s) specified in the Request for Proposal.

It is recognized that more than one method may be used to accomplish the sought after task functionality. If Offeror has an alternate method of performing functional tasks, then Offeror shall list such method as an "alternate", and described in full detail within the Proposal. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by the Offeror. Should no Offeror be found totally responsive to all designated Request for Proposal requirements, the City at its option, may either award the Contract to the most responsive Offeror or cancel the Request for Proposal and issue another Request for Proposal for the need under revised specifications.

19. **Technical Questionnaire:** Offeror must complete the Technical Questionnaire portion of this Request for Proposal and provide any documentation required to support the answers to the Questionnaire. Questionnaire items, which are designated as mandatory, are needed to satisfy a required task or performance criteria. Items, which may be listed as desirable, are not required to be responsive to the Request for Proposal and will be relatively evaluated against other proposals in making a final award decision.

If supporting documentation is required, Offeror shall provide the documentation in the sequence set forth in the Request for Proposal and ensure all technical literature and/or narrative explanations fully address the specifics of the question. Vague or disorganized responses that do not allow sufficient information for evaluation purposes may result in rejection of a Proposal.

20. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this Request for Proposals. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in its evaluation. Prices shall not be read. After Contract award, the proposals and the evaluation documentation shall be open for public inspection.

21. **Technical Proposal Opening:** Technical proposals (as received in step one of a two step bidding process) shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in the evaluation. Evaluation documentation to substantiate technical proposal selection(s) shall be open for public inspection.

22. **Proposal Evaluation and Award:** Award(s) shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the Request for Proposal. The City shall be the sole judge as to the acceptability of the products and/or services offered.

23. **Clarifications and Negotiations with Offerors and Revisions to Proposal:** Clarifications may be made with any submitting firm at any time during the evaluation phase of this procurement. Clarifications are not negotiations and may be utilized by the City to ensure thorough and complete understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of negotiations is to allow the City and the Offeror(s) to revise initial Offers through an exchange or series of exchanges. Should the City elect to call for final proposal revisions (best and final Offers), Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiations and revision of proposals, and such revisions may be permitted after submissions and prior to award. In conducting clarifications and negotiations there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such negotiations shall include but not be limited to:

- A. Determine in greater detail such Offeror's qualifications;
 - B. Explore with the Offeror the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
 - C. Determine that the Offeror will make available the necessary personnel and facilities to perform within the required time; and
 - D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
24. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
25. **Public Record:** Proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award. Material portions of the recommended Offer(s) as determined by the City may be posted to the City's web site up to five (5) days prior to the City Council meeting.

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. Offeror agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Offeror further agrees to provide a copy of its antidiscrimination policy to the City's Procurement Officer to demonstrate compliance with TCC section 2-603(5), or attest in writing to its compliance in accordance with the attached Affidavit of Compliance.
 - C. Offeror 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 the submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

- E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- F. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.

- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;
- ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

- iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
- iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

- i) Terminate the Contract;
- ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
- iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.

C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.

22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

- A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.
- B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.
23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.
24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.
25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280

[Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.

30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.
34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.

38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 (“Order”);
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.
41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapon’s permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor’s warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City’s satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor
45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.
46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for one hundred twenty (120) days after the proposal due time and date.
3. **Term of Contract:** The term of the Contract shall commence on the date of award and shall continue for a period of five (5) years thereafter, unless terminated, canceled or extended as otherwise provided herein.
4. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for ninety (90) days beyond the stated term. In addition, the City at its option may renew for supplemental terms of up to a maximum of two (2) additional years. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of two (2) years each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
5. **Insurance:**
 - A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.

- B. **Minimum Limits of Coverage:** Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.

- E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
 - F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
 - G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
 - H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
 - I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
6. **Job Site Requirements and Clean-Up:** Contractor agrees and covenants to adequately protect the work site, adjacent property and the public in all phases of the work and/or services provided herein. Contractor shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. Contractor shall maintain access to all phases of the Project pending inspection by the City or its agent. Contractor hereby agrees to the following as to the job site:
- A. Continually keep the job site free from debris, waste and accumulation of materials;
 - B. Immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary;
 - C. Keep machinery clean and free of weeds and debris;
 - D. Remove all construction stains, smears and debris from finished surfaces;
 - E. Perform site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and,
 - B. Remove all equipment, materials, tools and Contractor's personal property prior to submission of final invoice to the City.

7. **Conduct and Dress Code:** The Contractor's employees shall maintain proper conduct at all times while on City property. Employees shall respect other personnel at the work site. Abusive language, ethnic and racial slurs, sexual comments and jokes, shouting, and gestures toward other personnel will not be tolerated. Any occurrence will result in immediate action with possible dismissal of that employee.

Employees will be neatly dressed with badges or uniforms that identify them as employees of the Contractor.

8. **Safety, Health and Sanitation:** The Contractor shall provide and maintain in a neat, sanitary condition such facility accommodations for the use by their employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code.

The Contractor shall be fully responsible for the safety of their employees, the public and property in connection with the performance of the work covered by this Contract. The Contractor shall provide all safeguards, safety devices and protective equipment and be responsible for taking any needed actions to protect the life and health of their employees and the public during work activity. The Contractor shall also take any necessary actions as directed by the City of Tempe Project Manager to reasonably protect the life and health of employees on this job and others coming into contact with the job site.

Precaution shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State Occupational Safety and Health Acts, and Standards and Regulations promulgated there under.

9. **Protection and Restoration of Property and Landscape:** The Contractor shall be responsible for all damage or injury to public or private property of any character, during the prosecution of the work resulting from any act, omission, neglect, or misconduct in its manner or method of executing the work or at any time due to defective work or materials. The Contractor's responsibility will not be released until the project has been completed and accepted.

If damage is caused by the Contractor, the Contractor shall restore at no cost to the City of Tempe, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or they shall make good such damage or injury in an acceptable manner. Further payments will be withheld until the City of Tempe has inspected the corrected damage or injury and has signed-off the completion and acceptance.

Contractor shall not dump spoils or waste material on private or private public property without first obtaining from the owner written permission for such dumping.

10. **Sub-Contractor(s):** The City reserves the right to approve all sub-contractors. Contractor is responsible for all actions of sub-contractors. Contractor shall name sub-contractors as additionally insured, in addition to the City of Tempe on all required insurance documents.

11. **Materials and/or Equipment:** Materials and/or equipment, furnished by the City will be delivered or made available to the Contractor when necessary. The Contractor will be held responsible for all materials and/or equipment accepted by them and will make good any shortages, deficiencies or damages that may occur after such acceptance.

Scope of Work

The City of Tempe Regional Bicycle Center (RBC) is a regional bicycle commuter parking facility located at 200 E. 5th Street in the Tempe Transportation Center (TTC) at the northwest corner of 5th Street and College Avenue. The Transportation Center offers a variety of mobility choices and amenities to encourage travel that improves air quality, reduces traffic and parking congestion, and enhances the community's livability. This RFP offers the opportunity for a successful proposer to operate the RBC and provide ancillary services in a commercial manner under a Landlord/Tenant relationship. With more than 175 miles of bikeways, major events and new, innovative bike facilities, Tempe is internationally recognized as a Bicycle-Friendly Community. *Bicycling* magazine recently named Tempe the top Arizona bike town. At 4%, Tempe has one of the highest percentages of bicycle commuters in the country and highest in Arizona.

Pre-Proposal Conference

A Pre-Proposal Conference and site visit is scheduled on Monday, February 29, 2016 at 10:00 AM in the Financial Services Conference Room, 20 E. 6th Street, 2nd Floor, Tempe, Arizona 85281. *Attendance is not mandatory, but is highly encouraged.*

Proposers are encouraged to ask questions at the Pre-Proposal Conference, however no verbal answers or information provided at the conference are binding on the City unless issued in writing through a formal addendum. Vendors are encouraged to submit all questions in writing to Lisa Goodman at lisa_goodman@tempe.gov.

Regional Bicycle Center

The RBC is located on the ground floor of the Tempe Transportation Center and has 2,000 square feet of bicycle storage racks, lockers, and restrooms. The main room (maintenance, circulation, and bike rack area) is 1,200 square feet, and the area between the Transit Store and main area is an additional 624 square feet, (See Exhibit A). The desk area is approximately 24 lineal feet. There are 112 bicycle storage spaces in the two-tiered bicycle racks installed inside the RBC. In addition, there are four (4) complete changing rooms with a shower, toilet, sink, and space to change. There are 72 lockers that can be secured with individual padlocks just outside the changing areas. There is security personnel assigned 24 hours per day, 7 days per week at the Transportation Center and the RBC also has surveillance cameras overlooking the locker entrance area and the bicycle main parking area. After-hours access for RBC members shall be available through the card access system provided by the City.

Community and Retail Sales/Services

The City is seeking proposals for the operation of the RBC and the provision of bike related services and sales. The RBC is intended to provide safe and secure services for the community that encourages bicycling and operated based on user fees that recover the cost of the services and offers bike related sales and services. The following are community services and functions the City of Tempe envisions provided on its behalf for its residents and visitors:

Community Services:

- Management and promotion of the use of the regional bike parking facility.
- Administration of a fee based membership program that provides secured daily, short and long term bike parking, shower and locker facilities.
- Management of the distribution and control of electronic access cards provided to RBC members. Cards to be provided by the City.
- Member services administration including member registration, reports of usage, membership records and reports and other functions in line with the program as mentioned above as may be requested by the City.
- Development and operation of a web-based registration system for enrolling members. Creation and maintenance of a web page that promotes membership and the use of the facility.
- Creation, production, and distribution of promotional materials promoting the RBC.
- Response to inquiries about the center and services provided.
- Provision of educational programs and training (safety, maintenance) for all levels of bicycle users in partnership with other non-profit community associations or with the City.
- Free registration service for bikes to be included in the national police database.

Proposers are expected to offer and provide retail services to meet the needs of RBC members and the public at large.

Retail Services:

- Sales of bikes, bike parts, and bike equipment
- Bicycle rentals
- Bicycle repair

As previously mentioned the RBC includes a two-tiered bicycle storage system for 112 bikes. The use of the storage system shall be at the discretion of the tenant, however, **NO REQUEST FOR PUBLIC PARKING OR MEMBERSHIP SHALL BE DENIED BASED ON A LACK OF STORAGE SYSTEM CAPACITY CAUSED BY TENANT.**

Hours of Operation

The RBC shall be accessible to the membership with key card access for twenty (20) hours per day, which is consistent with the operation of the Tempe Transit system. The City desires the RBC be staffed for a minimum of eight (8) hours per day (8:00 a.m. to 5:00 p.m.) Monday through Friday. Changes in the hours of operation must be approved by the City.

Responsibilities and Facility Maintenance Provided by Tenant

1. The Tenant shall provide and maintain a clean and safe condition in the RBC. The Tenant shall be responsible for all janitorial maintenance within the RBC and use only green certified cleaning products.
2. The Tenant shall develop and enforce appropriate policies to monitor safety and to ensure that all services are operated in a safe manner at all times.
3. The Tenant shall maintain an adequate and properly trained staff and not employ any person whose conduct or activities are deemed to be offensive or detrimental to the public patronizing the facility.
4. The Tenant shall operate the RBC in a professional manner to the satisfaction of the City and provide supervision at all times.
5. The Tenant shall operate and maintain the RBC and provide all furnishing and equipment necessary to the operation not furnished by the City.
6. The Tenant shall work with the City to maintain the interior of the buildings in a state of repair to meet City standards including painting, floor care, plumbing, electrical and building care.
7. The Tenant shall be responsible for damages to the RBC, bike racks, bathrooms and other City equipment and improvements through negligence on its part or by its employees or customers.
8. The Tenant shall maintain and clean the RBC and surrounding premises. The Tenant must remove all trash generated by or as a result of operations. The RBC must be maintained in a clean, attractive and inviting manner for the public.
9. The Tenant shall not install or keep on the premises any vending machines without approval of the City.
10. The Tenant must obtain approval from the City to change the services offered and any other articles sold on the premises.
11. The Tenant, at the termination of this Agreement, shall clean and repair the facilities to the satisfaction of the City. All Tenant equipment shall be removed and all City equipment shall be in good operating condition.
12. The Tenant shall follow and comply with all applicable City codes and policies.

Regional Bicycle Center Membership Rates

The successful proposer will be responsible for membership enrollment and collection of fees for the RBC. All fees shall be retained by the Tenant. Responsibilities include taking payments for membership, issuing access cards, proper recording of membership, fees, and usage. Membership privileges include access to bicycle storage, showers, restrooms and clothing lockers in addition to other membership amenities provided. Membership fees are to be proposed, but are subject to City approval.

Responsibilities and Facility Maintenance Provided by the City

1. The City shall provide bicycle parking racks, restrooms, lockers and two-thousand (2,000) square feet of building.
2. The City shall maintain the mechanical heating and cooling equipment, roofs and exteriors of the facility.
3. The City shall maintain the electrical fixtures and plumbing fixtures bringing electricity and water to the RBC.
4. The City shall maintain the hot water heaters.
5. The City shall provide pest control outside the RBC.
6. The City shall be responsible for damages to the RBC and equipment owned by the City caused by means beyond the Tenant's control.
7. The City shall issue card key access to the facility.

Utilities

The Tenant is responsible for the cost of electric and telephone utilities. The City must approve in writing the use of any equipment by the Tenant at the RBC prior to its installation and use. The Tenant must cooperate with the City in energy conservation efforts.

Personnel

It is very important to the City that the people using the RBC are treated in a cordial, courteous, polite and professional manner. The Tenant is responsible for its actions and those of its employees, volunteers and guests. Inappropriate conduct toward the public by the Tenant or anyone it is responsible for will be deemed a material breach of this Agreement.

Americans with Disabilities Act (ADA)

The Tenant must comply with the Americans with Disabilities ACT (ADA) regulations and ensure that all services are ADA accessible as appropriate.

Licenses

The Tenant must be bonded and licensed to perform such trades within the City.

Bond

The Tenant must provide a non-revocable Security Bond binding the Tenant to provide faithful performance of the Agreement in the amount of One Thousand Dollars (\$1,000) payable to the City. The Security Bond shall be in the form of an irrevocable letter of credit, certified check, cashier's check or other arrangement agreed upon at the option of the Tenant as may be in the form acceptable to the City. Should the Tenant fail to provide the Security Bond as required, the Tenant will be found in default. The City may apply the Security Bond to any outstanding amounts owed by the Tenant under this Agreement that have not been paid after ten (10) days' notice in writing. The City may apply the Security Bond to any damages to the premises caused by acts of negligence of the Tenant, its agents or employees. In the event that the Agreement is concluded and there are no outstanding obligations owed from the Tenant to the City, any Security Bond given under this Section shall be cancelled or returned to the Tenant upon completion of the contract term.

Default

Should the Tenant at any time be in default in the payment of the agreed monthly rental as herein set forth, or should there be any other default or breach occurring in any of the covenant, promises, undertakings, agreements, or obligations in this instrument to be performed by the Tenant, the City at its option, may terminate this Agreement and may enter upon said demised premises, whether with or without process of law, and take possession of all property therefrom and assert a possessory of landlord's lien for money owed by the Tenant to the City, without the necessity of any notice or demand whatsoever. All rights, title or interest of the Tenant to the demised premises, whether in law or in equity, shall immediately cease and terminate. It is further understood and agreed that the remedies herein set forth are not exclusive and the City may pursue any additional or other remedies provided by law. In the event suit shall be brought by the City for unlawful detainer or premises by the Tenant, or by the breach of any of the covenants, terms or conditions herein contained on the part of the Tenant to be kept and performed, the Tenant agrees to pay the City an additional amount equal to reasonable attorney's fees which should be fixed by the court in such action, and any other collection expenses including court costs. Failure to obtain and keep current any applicable government permits, certificates or licenses shall be deemed a material breach.

Signage

1. The Tenant is required to post permanent signage viewable by the public indicating the name of the Tenant and phone number.
2. The Tenant is required to post additional signage indicating the hours of operations and services provided. The Tenant is required to give each patron a list of the rules and safety information.
3. All signs must be of professional quality and all signs and printed materials must be approved by the City.

Tenant Improvements

The Tenant shall be responsible for all costs and permits required for tenant improvements. All proposed improvements including materials used must be approved by the City or authorized designee.

City Lease or Payments

The Tenant shall pay the City on an annual per sq. ft. basis to be based on 2,000 sq. ft. available for use and operation of the Regional Bicycle Center. Lease payments shall be made to the City monthly.

Terms of Agreement

The term of the Agreement shall be for a five (5) year period beginning on the signature date of the Agreement plus an additional option of one (1), two (2)-year renewal period subject to mutual agreement by the Tenant and the City.

Proposal Format

Listed below is the requested format for your proposal response. The sections below represent the criteria for which your proposal will be evaluated. It is important to address each of the items listed below to enable the City to adequately evaluate your response.

1. **Bicycle Industry/Retail Experience**

- A. List the number of years your firm has been in the bicycle industry. Include detailed resumes of each individual that will be assigned to this Agreement.
- B. Describe the type of services your firm provides.
- C. List up to three (3) references to which you have provided related bicycle industry experiences/jobs. List a contact name and phone number, dates of services provided and a brief description of services provided.

2. **Business/Management Experience**

- A. Identify the individual who will be responsible for managing the Regional Bicycle Center.
- B. Describe your procedures for employee hiring, training, supervision and evaluation.
- C. Outline your firm's experience running a business or retail operation.
- D. Customer service experience.
- E. Ability to maintain cleanliness/appearance of facilities.

3. **Financial Status**

- A. Demonstrate your firm's solvency/responsibility to maintain a long-term agreement with the City and to expend the necessary outlay cost to meet operational and program requirements in a quality manner..
- B. Provide current financial statements of assets and liabilities to include a balance sheet, income statement, and statement of cash flows. Statements or reports reviewed or audited by the CPA firm will receive the greatest credibility for evaluation purposes.
- C. Provide at least two (2) financial references which verify financial history and stability.
- D. Describe the stability of your business relationships.

4. **Marketing/Merchandising Experience**

- A. Describe in detail your marketing and merchandising approach.
- B. Include the number of years' experience performing merchandising services as it relates this RFP.
- C. Describe creative merchandising ideas and commitments to the Regional Bicycle Center.

5. **Methodology for Providing Retail Sales and Services**

- A. Provide a description and list of retail items to be sold (bike, parts, etc.). The sale of alcoholic beverages is not permitted at the location.
- B. Provide a list of services and bicycle related operations being proposed, including bicycle rentals, repairs, sales and classes.
- C. Provide a description of your equipment inventory
- D. Do you currently own the equipment and supplies needed to operate the RBC? If not, how will you purchase and/or lease the equipment and supplies to service the agreement.
- E. Provide the number of bicycles that will be available for rental.
- F. How long will it take you to install the required concession equipment and become fully operational after award of a contract, based on a tentative award date of April 21, 2015?

6. Financial Proposal to the City

- A. Amount of rent Proposer will offer the City per square foot based on 2,000 sq. ft.
- B. Proposed RBC membership fee schedule for daily, weekly and monthly membership as applicable.
- C. Anything over and above what the Proposer offers that will benefit the City.

7. Completeness of Proposal and Acceptance of Terms and Conditions

- A. Provide a statement of acceptance of the City's terms and conditions or indicate exceptions taken for the City to review.

**Financial Proposal Form
City of Tempe
Regional Bicycle Center**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Annual Rental per sq. ft. (x 2,000)						
Proposed RBC Membership Fees* as applicable						
Daily Fee						
Weekly Fee						
Monthly Fee						

*Fees subject to City approval

The City reserves the right to negotiate the proposed annual rental rate with the Offeror.

Proposal Checklist for Submittals

- _____ One signed and complete original of the proposal response, including "Vendor's Proposal Offer" (Form 201-B).
- _____ Five (5) copies of your original proposal response are included.
- _____ Proposal Format Items on pages 25 and 26 have been answered with all supporting documentation and included.
- _____ Financial Proposal Form is completed and included.
- _____ Any addendum(s) have been signed and included.
- _____ Signed and completed Affidavit of Compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5).

Evaluation Criteria

The City’s evaluation criteria for this RFP is stated below and additionally explained on pages 25 and 26. The rating/scoring process will be based on written proposal responses to determine the most advantageous offers. Finalists will be invited to interview with the City’s evaluation committee for the purpose of clarifying written proposal responses and to furnish any needed insight into the proposal’s overall response to the City’s RFP. The final rating/scoring will be based on both the written proposal and insights/clarification gained through the interview of the the finalists.

Award Criteria	Weight	X	Rating	=	Points
1. Financial Proposal to the City	40	X	_____	=	_____
2. Bicycle Industry/Retail Experience	15	X	_____	=	_____
3. Financial Status	15	X	_____	=	_____
4. Business/Management Experience	10	X	_____	=	_____
5. Methodology for Providing Retail Sales and Services	10	X	_____	=	_____
6. Marketing/Merchandising Experience	5	X	_____	=	_____
7. Thoroughness/completeness of proposal; Acceptance of the City’s Terms and Conditions	5	X	_____	=	_____
8. Quality of Interview and Effectiveness of Proposed Team (if conducted)	10	X	_____	=	_____
Total				=	_____

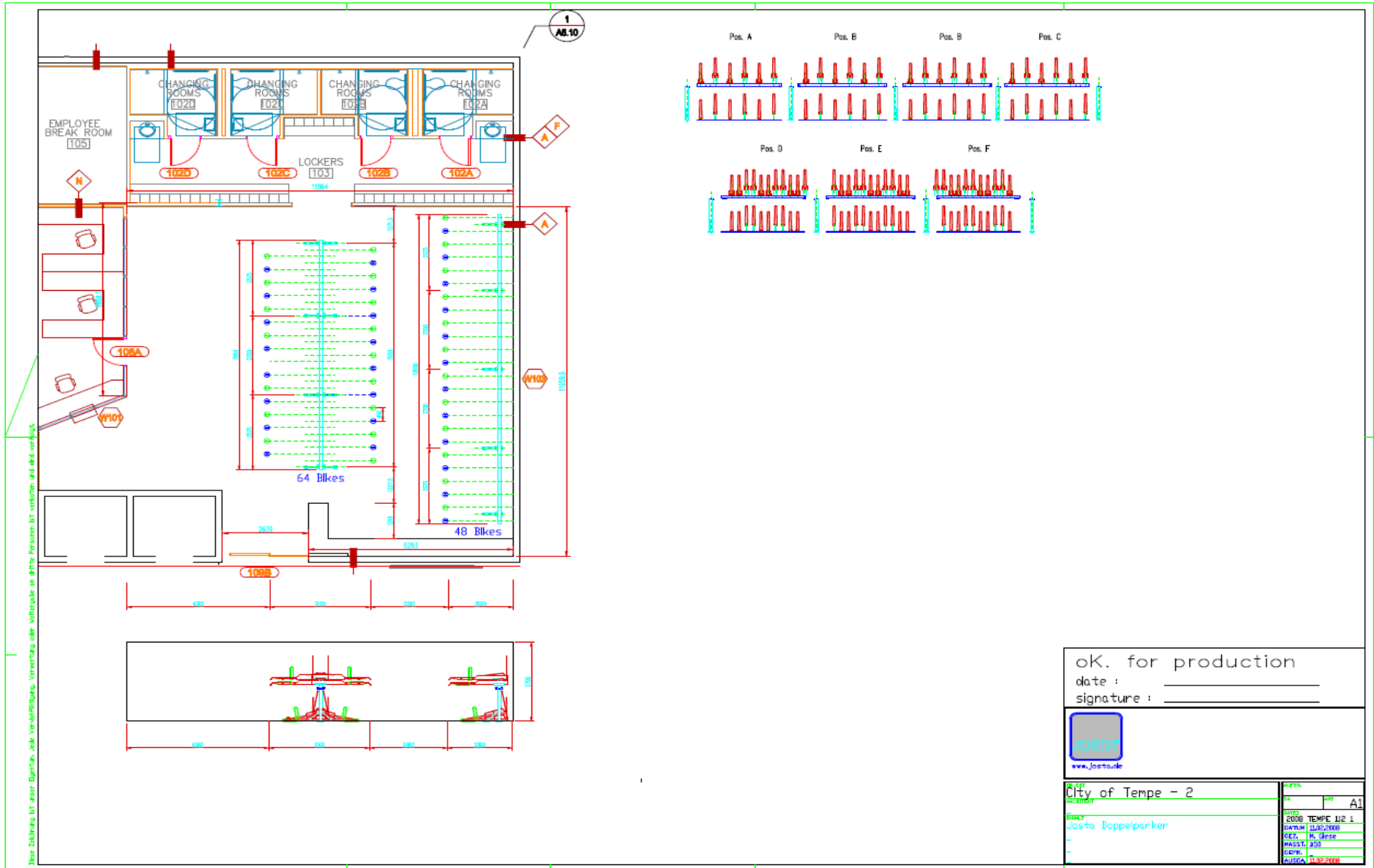
This proposal will be evaluated on a cumulative point system using the rating scale shown below (fractional points may be selected within this range).

Scoring

Outstanding	. . .	10 9
Good	. . .	8 7 6
Average	. . .	5 4 3
Poor	. . .	2 1
Not Addressed or Unacceptable		0

To evaluate the cost portion of the above criteria, the City may elect to evaluate each firm on a percentage basis of the lowest cost Offer. The formula would be: (Lowest Priced Offer/Evaluated Firm’s Price) X Points Possible = Evaluation Points.

Exhibit A





**AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE
CHAPTER 2 ARTICLE VIII SECTION 2-603(5)**

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors shall provide a copy of their antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

_____ Current copy of antidiscrimination policy attached.

OR

_____ I hereby certify _____ (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5), as well as in compliance with all City of Tempe ordinances, state and federal laws, executive orders, rules, and regulations relating to nondiscrimination.

Signature

Date: _____

Print Name

Title

Company

**CITY OF TEMPE
REQUEST FOR COUNCIL ACTION**

**Council Meeting Date: 04/14/2016
Agenda Item: 5B21**

ACTION: Award a five-year contract with one, two-year renewal option to The Bicycle Cellar, Inc. for the operation of the Regional Bicycle Center at the Tempe Transportation Center.

FISCAL IMPACT: There is no cost to the City for this contract. The contractor compensates the City with monthly rent payments. Total income to the City for the initial five-year term will be \$38,000.

RECOMMENDATION: Award the contract.

BACKGROUND INFORMATION: (RFP #16-110) The City of Tempe issued a Request for Proposal (RFP) to establish a contract for the operation of the Regional Bicycle Center under a landlord/tenant relationship.

The Regional Bicycle Center is a 2,000 square foot regional bicycle commuter parking facility located in the Tempe Transportation Center that provides safe and secure commuter services for the community to encourage bicycling and is operated based on user fees that contribute to the cost of the services and offers bicycle related sales and services. The bicycle center is a full service commuter center that offers: secure indoor parking, showers/changing facilities, bicycle maintenance and repairs, bicycle rentals, and educational opportunities.

Notification of the RFP was sent to over 75 vendors, including many local bicycle vendors and only one proposal was received.

Evaluation Process

The proposal was evaluated by a committee comprised of Public Works and Procurement staff. The following firm responded:

The Bicycle Cellar, Inc.

The proposal was scored using the following criteria:

Criteria	Weight
Financial proposal to the City	40%
Bicycle industry/retail experience	15%
Financial status	15%
Business/management experience	10%
Methodology for providing retail sales and service	10%
Marketing/merchandising experience	5%
Thoroughness/completeness of proposal; acceptance of City's terms and conditions	5%

Financial Proposal to the City

The Bicycle Cellar, Inc. will pay the City an annual rental rate per square foot as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Rental Rate (per square foot)	\$3	\$3	\$4	\$4	\$5
Membership Fees:					
Daily Fee (bicycle parking only)	\$2	\$2	\$3	\$3	\$4
Monthly Fee (membership)	\$30/\$35	\$30/\$35	\$35/\$40	\$35/\$40	\$35/\$40

The Bicycle Cellar, Inc. will also be responsible for electric utility costs.

Results of Scoring

Results of the scoring are as follows:

Offeror	Score
The Bicycle Cellar, Inc.	735

It is the recommendation of the committee to award a contract to The Bicycle Cellar, Inc. The company has successfully operated the Regional Bicycle Center at the Tempe Transportation Center since 2009.

ATTACHMENTS: Vendor Offer Form

STAFF CONTACT(S): Shelly Seyler, Deputy Public Works Director - Transportation/Traffic Engineering, (480) 350-8854

Department Director: Renie Broderick, Internal Services Director
 Legal review by: David Park, Assistant City Attorney
 Prepared by: Lisa Goodman, CPPO, Procurement Officer