

## Instructions, Standard Terms & Conditions for Request for Bid (RFB)

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All City of Yuma solicitations are accessed through the City's Procurement Portal<sup>1</sup> (Portal). A schedule of events and all other information pertaining to the solicitation are located in the Portal. Bid submittal assistance is available at [Support@gobonfire.com](mailto:Support@gobonfire.com), Monday through Friday, 8AM to 8PM, EST.

### SECTION 1: RFB INSTRUCTIONS

#### 1.1 COMMUNICATION WITH THE CITY

All Bidder communications concerning this solicitation must be directed to the Procurement Division. All questions must be submitted via the Portal.

No other City official or City employee is empowered to speak for the City with respect to the Bid. Any Bidder seeking to obtain information, clarification, or interpretations from any other City official or City employee other than identified above, is advised that such material is used at the Bidders own risk. The City will not be bound by any such information, clarification, or interpretation. Bidders are specifically instructed to not contact any design professional for information, clarification or interpretation concerning this project. Any such contact may result in the bid being disqualified.

At no time prior to award of bid will Bidder have any communication with any City employee, except as identified above. Contact by a Bidder regarding this Bid with a City employee other than a Procurement Division representative may be considered grounds for rejection of the bid submitted.

As questions submitted require adequate time for response preparation, Bidders are asked to submit all questions through the Portal by the date and time indicated in this solicitation.

#### 1.2 REQUIRED REVIEW

1.2.1 Review RFB: Bidders should carefully review this RFB in its entirety including all instructions, requirements, specifications, and terms/conditions and promptly notify the Buyer using the Portal of any ambiguity, inconsistency, unduly restrictive specifications, or error which may be discovered upon examination of the RFB.

1.2.2 Addenda: The City of Yuma may revise the RFB by issuing an addendum prior to its opening. The addendum will be posted on the Portal. It is the bidder's sole responsibility to monitor this site for updates during the solicitation process. Addenda will become part of the bid documents and subsequent contract. Bidders must indicate receipt of Addenda in their RFB response utilizing the Addenda Acknowledgement Fill Form. Failure to propose in accordance with an addendum may be cause for rejection. In unusual circumstances, the City of Yuma may postpone an opening in order to notify vendors and to give Bidders sufficient time to respond to the addendum.

1.2.3 Form of Questions: Bidders with questions or requiring clarification or interpretation of any section within this RFB must address these questions in writing using the Question and Answer process provided in the Portal. Questions cannot be submitted after the question deadline.

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<sup>1</sup> <https://yumaaz.bonfirehub.com/portal/>

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### 1.3 PRE-BID MEETING

Details regarding any pre-bid meetings will be provided in the events section of the RFB posting on the Portal. Any doubt as to the requirements of this bid or any apparent omission or discrepancy may be presented in writing or in person to the City at this meeting. Oral statements or instructions will not constitute an amendment to this bid. The City will determine the appropriate action necessary, if any, and issue an addendum to the bid. Bidder attendance is highly recommended, but not mandatory. The purpose of this meeting will be to clarify the contents of this bid in order to prevent any misunderstandings of the City's position.

### 1.4 SUBMITTING A BID

Details regarding how to submit bids are provided in the Portal.

1.4.1 Bidders may revise their bids until such time as the submission period closes.

1.4.2 The City is not responsible for any server delay.

### 1.5 BIDDER'S CERTIFICATION

1.5.1 Understanding of Specifications and Requirements: By submitting a response to the RFB, Bidder agrees to an understanding of and compliance with the scope of work, specifications, and requirements described in the RFB.

1.5.2 Bidder in Effect for 90 Days: Except in rare cases a bid may not be corrected, withdrawn, or canceled by the Bidder for a 90-day period following the deadline for bid submission as defined in the official project posting, or receipt of best and final Bidder, if required, and Bidder so agrees in submitting the bid.

### 1.6 COST OF PREPARING A BID

1.6.1 City of Yuma Not Responsible for Preparation Costs: The costs for developing and delivering responses to this RFB and any subsequent presentations of the bid as requested by the City of Yuma are entirely the responsibility of the Bidder. The City of Yuma is not liable for any expense incurred by the Bidder in the preparation and presentation of their bid.

1.6.2 All Timely Submitted Materials Become Property of the City of Yuma: All materials submitted in response to this RFB become the property of the City of Yuma and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City of Yuma and Bidder resulting from this RFB process.

### 1.7 TAXES

Unless specifically required in this bid, do not include any sales tax, use tax, or Federal Excise Tax in your bid pricing. Unit price will not include any tax. Taxes may be added to invoices and must be current Arizona State Tax and your local tax as applicable.

### 1.8 FEDERAL EXCISE TAX

The City of Yuma is exempt from Federal Excise Tax for petroleum products including Federal Transportation Tax.

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### 1.9 INVOICING

In order to receive prompt payment for goods and/or services to the City of Yuma, the Bidder is required to submit an original invoice to City of Yuma Finance Department/Accounting Division at [payables@YumaAz.gov](mailto:payables@YumaAz.gov) as indicated on the Purchase Order. [ACH Enrollment](#) is secured and strongly encouraged for timely payment. Please submit the completed form from the website.

Invoices must show:

- 1) Contract (Bid) Number
- 2) Complete descriptions of the goods and/or services received
- 3) Quantity
- 4) Unit prices and extensions
- 5) All applicable taxes
- 6) Name of department/division to which shipment was made
- 7) In addition, the invoice should include the Bidder's invoice number and contact information
- 8) Name of City Staff member that placed the order if a Purchase Order was not issued

***Note: Invoices for work performed during the month of June must be received no later than the end of the first week in July, for City of Yuma fiscal year end closing purposes.)***

### 1.10 LATE RESPONSES/MODIFICATIONS/WITHDRAWAL OF BID

Responses, modification of Responses, and withdrawals may be withdrawn if the project deadline has not passed as stated in the Procurement Portal.

### 1.11 PROTESTS

Any actual or prospective Bidder who is aggrieved in connection with this bid or award may protest to the City Council. The protest must be submitted in writing to the City Administrator within ten days after such aggrieved person knows or should have known of the facts giving rise, and the City Administrator will place same on the next Council agenda if not resolved prior to that time.

### 1.12 POLICY ON NON-DISCRIMINATION ON THE BASIS OF DISABILITY

- A. In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in its programs, or activities.
- B. For information regarding rights and provisions of the ADA or section 504, or to request reasonable accommodations for participation in City programs, or activities, contact:

City of Yuma Human Resources Department  
One City Plaza  
Yuma, Arizona 85364-1436  
(928) 373-5125 or (928) 373-5149 (TTY)

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### SECTION 2: RFB RECEIPT AND EVALUATION PROCESS

#### 2.1 AUTHORITY

This RFB is issued under the authority of the City of Yuma.

#### 2.2 RECEIPTS OF BIDS AND PUBLIC INSPECTION

2.2.1 Public Information: During the opening of bids, the Bidder's name, bid amount, and other pertinent information will be provided in a public manner. No other information will be disclosed at that time. Each bid offer is considered open record and all information received in response to this RFB, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after bid opening with the following four exceptions:

1. bona fide trade secrets meeting confidentiality requirements that have been properly marked, separated, and documented;
2. matters involving individual safety as determined by the City of Yuma;
3. any company financial information requested by the City of Yuma to determine vendor responsibility, unless prior written consent has been given by the Bidder; and
4. other constitutional protections.

2.2.2 Buyer's Review of Bids: Upon opening the bids received in response to this RFB, the Buyer in charge of the solicitation will review the bids and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the bid;
- Bid does not contain confidential material in the price section; and
- An affidavit from a Bidder's legal counsel attesting to and explaining the validity of the trade secret claim is attached to each bid containing trade secrets.

Information separated out under this process will be available for review only by Buyer, the Procurement Manager, and limited other designees. Bidders must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

#### 2.3 CLASSIFICATION AND EVALUATION OF BIDS

2.3.1 Initial Classification of Bids as Responsive or Non-responsive: All bids will initially be classified either "responsive" or "nonresponsive". Bids may be found non-responsive at any time during the evaluation process if: any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured in the RFB; or the bid is not within the plans and specifications described are required in the RFB. Bids found non-responsive shall not be considered further.

2.3.2 Determination of Responsibility: The City of Yuma will determine whether a Bidder has met the standards of responsibility. Such a determination may be made at any time during the evaluation process if information surfaces that would result in a determination of non-responsibility. If a Bidder is found non-responsive or not reliable, the determination must be in writing and made a part of the procurement file.

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- 2.3.3 Completeness of Bid: Selections and award will be based on the Bidders submittal and other items outlined in the RFB. Submitted responses may not include references to information located elsewhere, such as Internet websites, or libraries, unless specifically requested. Information or materials presented by Bidders outside the formal response or subsequent discussion/negotiation, if requested, will not be considered, will have no bearing on any award, and may result in the Bidder being disqualified from further consideration.
- 2.3.4 Opportunity for Discussion: After receipt of all bids and prior to the determination of the award, the City may initiate discussions with one or more Bidders should clarification or negotiation be necessary.
- 2.3.5 Unbalanced Bid: The City may reject any bid that is unbalanced if it is in the best interest of the City to do so. A bid will be considered unbalanced when, in the opinion of the Procurement Agent, the bid allocates a disproportionate share of costs to the price of one or more bid items in order to reduce the costs to the price of another bid items and is a responsible possibility that the bid will not result in the lowest overall cost to the City.

### SECTION 3: STANDARD TERMS & CONDITIONS

It is the City of Yuma's intent of the specifications to set the minimum standards to be used for the bidding of the products. Any references to Make, Model and Manufacturer are only to indicate minimum specifications for quality and performance. They are not intended to be restrictive in nature or to eliminate use of any other manufacturer's products.

#### **BIDDERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE BID DOCUMENTS.**

In compliance with bid specifications, Bidder offers and agrees to furnish any and all of the items enumerated at the unit price offered set opposite each item, delivered at the designated point(s) within the time specified. The Bidder also acknowledges that all the Terms and Conditions of the Bid were carefully read and the appropriate sections were completed.

The award is subject to all legal requirements provided for in the City Charter or applicable City Ordinances, State and Federal Statutes.

All Bidders must disclose with their bid the name of any officer, director, or agent who is also an employee of City of Yuma. Further, all Bidders must disclose the name of any City employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Bidder's firm or any of Bidder's branches. Should the awarded Bidder permanently or temporarily hire any City of Yuma employee who is, or has been, directly involved with the Bidder prior to or during performance of the resulting contract, the contract will be subject to immediate termination by the City.

### **3.1 ADDENDA**

Addenda issued during the time of bidding must be completed, signed, and uploaded to the Portal and will be made as part of the contract documents.

### **3.2 AFFIRMATIVE ACTION**

The Bidder will be an Equal Opportunity Employer and make a good faith effort to encourage minority employment and agree to meet Federal and State guidelines. Bidders doing business with the City of Yuma are prohibited from discriminating against any employee, applicant, or

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client because of race, religion, color, disability, national origin, gender, or age with regard to but not limited to the following: employment practices, rates of pay, or other compensation methods, and trainers' selection.

### **3.3 ALTERNATE BID**

Bids submitted as alternates, as "equals", or on the basis of exceptions to specific conditions of purchases and/or required specifications, must be submitted with an attachment referencing the specific paragraph numbers and adequately defining the exception submitted. Detailed product literature, suitable to evaluate, must be submitted with the bid. If no exceptions are taken, the City will expect and require complete compliance with the specifications and conditions of purchase.

### **3.4 AMERICAN MADE**

Whenever possible, the goods, material, articles or equipment specified will be of United States origin and manufacture.

### **3.5 APPLICABLE LAWS**

In the performance of this contract, Bidders must abide by and conform to any and all laws of the United States, State of Arizona, and City of Yuma including but not limited to Federal and State executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Administration and any other Federal or State laws applicable to this contract. This contract will be governed by the City, and the Bidder will have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. The laws of the State of Arizona will govern this contract and any suit pertaining to this contract may be brought only in courts in the State of Arizona. Lack of knowledge by the Bidder and any subcontractor will in no way be a cause for relief from responsibility.

### **3.6 APPROPRIATION**

The City is obligated only to pay City's obligations set forth in the Contract as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Contract are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay City's Contract obligations, this Contract shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Contract. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Contract in any budget in any fiscal year other than the fiscal year in which the Contract is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for City's obligations under this Contract. The City shall keep Consultant informed as to the availability of funds for this Contract. The obligation of the City to make any payment pursuant to this Contract is not a general obligation or indebtedness of the City. Consultant hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Contract pursuant to this section.



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### 3.7 ASSIGNMENT

This contract is not assignable unless both parties mutually consent otherwise in writing. The requirements of this contract are binding upon the heirs, executors, administrators, successors and assigns of both parties.

### 3.8 AUTHORITY

This bid as well as any resultant contract is issued under the authority of the City of Yuma Procurement Manager. No alteration of any resultant contract may be made without the express written approval of the Procurement Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Charter and Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Bidder.

### 3.9 AWARD OF BID

Awards will be made with reasonable promptness to the lowest responsible and responsive Bidder(s) whose offer(s) best conform to the bid and is in the best interest of the City. Other factors to be considered may include, but are not limited to, quality, uniformity of product, delivery time, and the Bidder's past performance on other contracts with the City. Awards may be made to other than the lowest price offer. The City reserves the right to award any item or group of items of the bid, unless the Bidder has qualified the bid by specific limitation.

A written award of acceptance, in the form of a purchase order as per specifications or written notice of award through the Portal constitutes a binding contract without further action by either party. If contract award is \$100,000.00 or over, it will be at the discretion of the City Council as to whether or not to make award, to whom, or to reject offers.

The City, notwithstanding any other provisions of this bid (including attached documents), expressly reserves the right to:

1. Waive any insignificant defect or informality in any offer or bid procedure.
2. Reject any or all offers or
3. Re-issue the bid.

### 3.10 BID OFFER ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, the City requires an offer in response to a bid to remain valid and irrevocable for 90 days after the bid opening time and date.

### 3.11 BOYCOTT OF ISRAEL

Pursuant to Arizona Revised Statutes § 35-393.01, Company certifies that it's not engaged in a boycott of Israel as of the effective date of this Agreement and agrees for the duration of this Agreement to not engage in a boycott of Israel.

### 3.12 CERTIFICATION

By signature on the Bidder Form the Bidder certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.

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- B. The Bidder will not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246 or A.R.S. § 41-1461 Et. Seq.
- C. The Bidder has not given, offered to give, loan, gratuity, special discount, trip, favor, to a public servant in connection with the submitted offer.
- D. The Bidder submitting the offer hereby certifies that the individual signing the bid is an authorized agent for the Bidder and has the authority to bind the Bidder to the contract.

### 3.13 CITY PROCUREMENT DOCUMENT

The Procurement Division is issuing this bid. Bidder is not permitted to alter any portion of the bid document, and any attempt to do so will result in Bidder's offer being considered non-responsive. Bidder must not alter any portion of a resultant contract without the written approval of the Procurement Division and any attempt to do so will be a violation 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 cancellation, suspension and/or debarment of the Bidder.

### 3.14 CLARIFICATIONS

The City reserves the right to obtain clarification from Bidder when necessary to arrive at full and complete understanding of bid response.

### 3.15 CONFLICT OF WORDING

Where an item in the bid specification conflicts with the Terms and Conditions, the bid specifications will prevail and control.

### 3.16 CONTRACT

Upon acceptance of the Bidder's proposal the Bidder will, if requested by the City, execute and enter into a formal contract that is satisfactory to the Bidder and the City, to secure the contract required to protect the City.

### 3.17 CONFIDENTIAL INFORMATION

Proposals submitted to the City will be reviewed and evaluated by only those persons who have a legitimate interest. The City cannot guarantee the confidentiality of any information provided in the proposal and all items submitted as part of the Bidder's proposal will be available for public inspection to the extent required by public records disclosure laws after proposals have been received by the City.

### 3.18 CONTRACT ADMINISTRATION

The Procurement Division and an authorized representative of the primary user department will jointly administer this contract. All questions regarding this contract after award must be referred to an authorized representative for resolution.

### 3.19 CONTRACT AMENDMENTS

Any adjustments, alterations, additions, deletions, or modifications in the terms and/or conditions of this contract must be made by written change order approved by the City. If Bidder performs any modification without written change order, the City will not be obligated to accept said modifications.



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### 3.20 CONTRACT DEFAULT

The City, by written notice of default to the Bidder, may terminate in whole or any part of this contract in any one of the following circumstances:

- A. If the Bidder fails to make delivery of the supplies within the time specified: or
- B. If the Bidder fails to perform any of the provisions of this contract and fails to remedy the situation within the specified period of time in the notice.

In the event the City terminates this contract in whole or part, the City may procure goods similar to those terminated, and the Bidder may be liable to the City for any excess costs for such similar goods.

### 3.21 CONTRACT LENGTH

The contract will remain valid for a period of one year from date of issuance of purchase order or Notice of Award, unless otherwise noted.

### 3.22 CONTRACT TERMINATION

Either party may terminate the contract upon 30 days written notice by one party to the other. Both parties will perform in accordance with the contract prior to the effective termination date. The City may at any time cancel the contract for cause without penalty or liability on the part of the City. The City reserves the right to cancel any resultant contract upon 30 days' written notice when, in the City's judgment, the workmanship, quality, and performance of the goods of this contract are rendered unsatisfactorily or do not conform to the contract.

### 3.23 CURRENT PRODUCT

All bid offers made in response to this bid will be in current and ongoing production; will have been formally announced for general marketing purposes; will be a model or type currently functioning in user (paying customer) environments and capable of meeting or exceeding all specifications and requirements set forth in this bid. Enhancements to established products need not necessarily comply with this clause and will be reviewed on individual merits.

### 3.24 DEFECTIVE PRODUCT

All defective products must be replaced and exchanged by the Bidder. The Bidder will pay for the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses. The City must receive all replacement products within the specific period of time stated in the notice.

### 3.25 DELIVERY

Unless otherwise stated, the goods, specified or called for in or under this bid, must be delivered or completely performed by the successful Bidder within the period set out herein as the guaranteed period of delivery or completion after receipt of order. The Bidder agrees to make deliveries only upon receipt of a duly signed and approved purchase order issued by the City of Yuma Procurement and Contracts Manager or designated representative. Delivery made without such purchase order will be at Bidder's risk.

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### 3.26 DISCOUNTS

Prompt payment discounts will be considered in making the award provided the discount period is sufficient to allow the City to make payments in the regular course of business. If a discount is offered, time is computed from the date of receipt of goods, or from the date a correct invoice is received, whichever is the later date. Payment is deemed made on the date the check is issued.

### 3.27 EVALUATION

In a Request for Bid, award(s) will be made to the lowest responsible and responsive Bidder whose bid conforms in all material respects to the requirements and criteria set forth in the Request for Bid. The City will be the sole judge as to the acceptability of the products offered.

Evaluation criteria will include, but not be limited to:

1. Conformity with bid specifications, performance requirements, terms and conditions, bidder instructions and any other contractual clauses and or requirements.
2. Operational compatibility with existing City resources, as applicable.
3. Availability of competent prompt delivery of goods.
4. Having legally required licenses, certifications and/or qualifications to fulfil the contract.
5. Cost consideration including item pricing, delivery, installation, operation and life cycle and costs, Bidder's financial capability to fulfil the contract, and any other factors that would be advantageous to the City.
6. Record of past performance and integrity on City and/or other public agency contracts a
7. Production capability of equipment as determined by product samples, customer references, and/or City inspection.

### 3.28 E-VERIFY REQUIREMENTS

To the extent applicable under Arizona Revised Statutes ("A.R.S.") § 41- 4401, the Contractor and Contractor's subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-Verify requirements under A.R.S. § 23-214(A) ("Immigration Warranty"). Consultant's or Consultant's subcontractor's failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the documents of all Contractor personnel who provide goods under this Agreement to ensure that Contractor or Contractor's subcontractors are complying with the Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at City's sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the

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Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

### **3.29 FORCE MAJEURE**

The parties to the contract will be excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation, facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence is presented to the City, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

### **3.30 FREIGHT**

Prices will be Free on Board (FOB) Destination to the delivery location designated herein. Bidder will retain title and control of all goods until they are delivered, and the contract has been completed. The City will notify the Bidder promptly of any damaged goods and will assist the Bidder in arranging for inspection. All risk of transportation and all related charges will be the responsibility of the Bidder. The Bidder must file all claims for visible or concealed damage.

### **3.31 FORCED LABOR OF ETHNIC UYGHURS PROHIBITED**

Contractor shall comply with the applicable requirements of Arizona Revised Statutes § 35-394 and hereby certifies and agrees Contractor does not currently use and will not use for the term of this Contract: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware of such prohibited use of forced labor, Contractor shall notify the City within five days thereafter.

### **3.32 FUNDING**

Any contract entered into by the City of Yuma is subject to funding availability. The fiscal year for the City of Yuma is July 1, to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract may be terminated.

### **3.33 GRATUITIES**

The City may, by written notice to the Bidder, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Bidder or any agent or representative of the Bidder, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event, this contract is canceled by the City pursuant to this provision, the City will be entitled to recover or withhold from the Bidder the amount of the gratuity in addition to any rights and remedies.

### **3.34 INDEMNIFICATION**

To the fullest extent permitted by law, Bidder shall indemnify, defend, and hold harmless the City, City's agents, employees, officers, volunteers, and officials ("Indemnitee") for, from and against all claims, liabilities, demands, damages, losses, and expenses, including attorneys' fees and litigation expenses, to which any such Indemnitee may become subject, under any theory

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of liability whatsoever, (collectively "Claims") to the extent that such Claims result from and/or arise out of the Bidder's intentional, reckless, or negligent acts, mistakes, directives, errors, or omissions in performance of this Agreement. This includes any intentional, reckless, or negligent acts, mistakes, directives, errors, or omissions of the Bidder's officers, employees, agents, or any tier of subcontractor or person for which Bidder may be legally liable in the performance of this Agreement.

If the City uses grant funds received from the Arizona Department of Homeland Security to pay for the services or materials provided under this Contract, the following indemnity provision applies: Bidder shall defend, indemnify, and hold harmless the City and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Contract, and its departments, agencies, boards commissions, universities, officers, officials, agents and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Bidder or any of the directors, officers, agents, or employees or subcontractors of Bidder. This indemnity includes any claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claim arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Bidder from and against any and all claims. It is agreed that Bidder will be responsible for primary loss investigation, defense and judgement costs where these indemnifications are applicable. Additionally, on all applicable insurance policies, contractor and contractor's subcontractors shall name and endorse the City and the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents and employees as an additional insured and also include an endorsed waiver of subrogation in favor of the City and the State.

### **3.35 INSPECTION**

All goods or services are subject to final inspection and acceptance by the City. Goods or services failing to meet the requirements of this contract will be held at Bidder's risk and may be returned to the Bidder or reworked by the Bidder. If returned, the cost of transportation, unpacking, inspecting, repacking, reshipping or any other expenses are the responsibility of the Bidder.

### **3.36 INTERNET ORDERING CAPABILITY**

The City may utilize the Internet to place orders under this contract.

### **3.37 LICENSES**

Bidder will maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Bidder as applicable to this contract. The Bidder and all of their employees or agents will secure and maintain in force such licenses and permits as are required by law, and by the City, in connection with the furnishing of goods or services requested.

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### 3.38 LIENS

All goods or services must be free of all liens, and if the City requests, a formal release of all liens will be delivered to the City.

### 3.39 NON-EXCLUSIVE CONTRACT

Any contract resulting from this Bid will be awarded with the understanding and agreement that it is for the sole convenience of the City of Yuma. The City reserves the right to obtain like goods or services from another source when necessary. Only the City of Yuma Procurement Manager may approve off-contract purchase authorization. Approval will be at the discretion of the City of Yuma Procurement Manager and will be conclusive. However, approval will be granted only after a proper review and when deemed to be appropriate. Off-contract procurement will be consistent with the City Policies and Procedures.

### 3.40 NOTICE

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"), may be in writing and may be sent registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

- A. If intended for the City, to: City of Yuma, Procurement Division, One City Plaza, Yuma, Arizona 85364-1436.
- B. If intended for the Bidder, to: The Bidder at the Bidder's address and the attention of the person named as provided in the offer of this contract.

### 3.41 OBJECTIONS

Any objection to the specifications and requirements as set forth in this bid must be filed in writing with the Procurement Division 72 hours prior to bid opening.

### 3.42 ORDERING INSTRUCTIONS

Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a purchase order or document signed by an authorized agent. The purchase order will specify the items ordered, delivery instructions and any other pertinent information required. All City and Bidder documents must reference the resultant contract number.

### 3.43 PACKING AND SHIPPING

Bidder will be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Commerce Commission regulations. Containers must be clearly marked as to lot number, destination, address, and purchase order number.

### 3.44 PATENTS

The successful Bidder must agree to defend, at his own risk, all suits alleging infringement on any United States Patents by reason of the use and/or resale of items purchased under this bid.

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### **3.45 PAYMENTS**

Invoices will normally be paid within 30 days after receipt of goods or invoice; whichever is later. The City reserves the right to review all payments made to the Bidder by auditing at a later date. Subject to such audit, the Bidder must immediately reimburse any overpayments.

### **3.46 PERMITS**

The Bidder is responsible for procuring all permits and licenses, paying all charges, fees and sales tax, and giving any notices necessary and incidental to performing the work. The City will exempt the Bidder from paying the standard fees for permits issued by the City provided that all the permits are issued prior to the commencement of the work. Permits requested and issued after commencement of the work, will be paid for by the Bidder, and at double the standard fee rate, for which the City will assume no responsibility.

### **3.47 PERIOD OF TIME**

Periods of time, stated as number of days, will be calendar days.

### **3.48 PREPARATION**

The City will not reimburse the cost of developing, presenting or providing any response to this bid. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

### **3.49 PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL**

All specifications will seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications will receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

### **3.50 PRICE**

The prices quoted on this bid will be based on the goods referred to herein, being delivered F.O.B. destination, freight, duty and all other charges prepaid, unless otherwise indicated herein. A detailed delivery ticket or piece tally, showing the exact quantity of goods and must accompany each delivery. A representative's signature will not bind the City to accept the goods, material, articles or equipment covered.

### **3.51 PRODUCT DISCONTINUANCE**

The City of Yuma may award contracts for particular products and/or styles as a result of this bid. If the manufacturer discontinues a product or style, the City, at City's sole discretion, may allow the Bidder to provide a substitute for the discontinued item. The Bidder must request permission to substitute a new product or style and provide the following:

- A. A formal announcement from the manufacturer that the product or style has been discontinued.
- B. Documentation from the manufacturer that names the replacement product or style.
- C. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original bid.



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- D. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or style.
- E. Documentation confirming that the price for the replacement is the same as or less than the discontinued style.

### **3.52 PROTECTION OF CITY PROPERTY**

The Bidder will use reasonable care to avoid damaging City property. If the Bidder causes damage, the Bidder must replace or repair the damage at no expense to the City as directed by the Procurement Manager. If the Bidder fails or refuses to make such repair or replacement, then the Bidder will be liable for the cost thereof, which may be deducted from the contract price.

### **3.53 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 sure insertion or correction.

### **3.54 PUBLIC RECORD**

All offers submitted in response to this bid will become the property of the City and will become a matter of public record available for review, in accordance with the City's Charter.

### **3.55 QUANTITIES**

The quantities requested are estimates based upon available information. The City reserves the right to adjust the quantities as necessary. The quantity of goods ordered must not be exceeded or reduced without the City's permission in writing except in conformity with acknowledged industry tolerances.

### **3.56 REJECTIONS**

The City and/or City Council may reject any part of or all bids whenever it is deemed in the best interest of the City. The City may also waive any minor informalities or irregularities in any bid.

### **3.57 RIGHTS AND REMEDIES**

No provisions of this bid or in the Bidder's bid response will be construed, expressly or by implication, as a waiver by the City or 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, will not release the Bidder from any responsibilities or obligations imposed by the contract or by law, and will not be deemed a waiver of any right of the City to insist upon the strict performance of the contract.

### **3.58 SAMPLES AND/OR DEMONSTRATIONS**

Samples and/or demonstrations may be requested if item is other than specified. When required, such samples and/or demonstrations are to be furnished after the date of bid opening only upon request of the City unless otherwise stated in the bid proposal. If samples and/or demonstrations should be requested unless otherwise authorized, the City must receive such samples and/or demonstrations within a specific period of time as stated in the formal request. When required,

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the City may request samples and/or demonstrations of any item bid prior to the award of any contract. Bid samples must be an exact and true representative sample of the actual material offered. Each bid sample must be properly tagged or labeled with the name of the Bidder and manufacturer, the bid opening date, and the bid number. Bid samples must be provided at no additional cost to the City. Samples not used for tests will be returned to the Bidder, at the Bidder's expense. Furthermore, the City reserves the right to secure additional samples from the actual material supplied. In the event the samples fail to conform to the contract requirements, the Bidder will immediately replace the portion of the delivered commodity with acceptable materials conforming to the contract requirements at no cost to the City.

### **3.59 SEVERABILITY**

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

### **3.60 SITE CONDITIONS**

Bidder must make all necessary investigations to thoroughly inform themselves regarding site conditions for delivery of goods as required in this bid. Failure of the Bidder to thoroughly investigate site conditions will not be:

- A. Accepted as a basis for failure to fulfill the requirements
- B. A basis for variance of compensation

### **3.61 SUBSEQUENT EMPLOYMENT**

The City may cancel this contract without penalty or further obligation pursuant to the A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is or becomes, at any time while the contract or any extension of the contract is in effect, an employee of or a consultant to any other party to this contract with respect to the subject matter of the contract. Such cancellation will be effective when the parties to this contract receive written notice from the Procurement Manager, unless the notice specifies at a later date.

### **3.62 SUBMITTAL**

It is the Bidder's sole responsibility to ensure the delivery and receipt of bid submittal to the Portal, prior to bid opening time. Bids and modifications or withdrawals received after the time set for the bid opening will not be considered. Bids must be submitted on the forms furnished with this Request for Bid. The City is not responsible for any server delays.

### **3.63 TAX**

Taxes may be added to invoices and must be current Arizona State Tax and the Bidder's local tax. If the Bidder is an out-of-state Bidder, the City of Yuma will remit Arizona Use tax directly to the State of Arizona.

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### **3.64 TAX/DUTY CHANGES**

The Bidder will be responsible for advising the City about any tax/duty change. If such a change occurs in tax or duty imposed on such goods before delivery, an appropriate increase or decrease will be made to compensate for such changes as of the effective date.

### **3.65 WARRANTIES**

The awarded Bidder must fully warrant all products furnished hereunder against defects in materials and/or workmanship for a period of one year from date of delivery and complete acceptance by the City, unless indicated otherwise in bid specifications. Should any defects in materials or workmanship except ordinary wear and tear appear during the above stated warranty period, the awarded Bidder will repair or replace same at no cost to the City, immediately upon verbal or written notice from the City. A copy of the warranty must be provided at time of delivery. Failure to provide warranty at time of delivery will be considered as an incomplete delivery.

### **3.66 WITHDRAWAL**

A Bidder may withdraw a bid if the project deadline has not passed.

### **3.67 WRITTEN AUTHORIZATION**

No verbal arrangement or agreement relating to the goods specified or called for under this bid will be considered binding, and every notice, advice or other communication must be in writing and signed by a duly authorized person.

*END OF INSTRUCTIONS, STANDARD TERMS & CONDITIONS*