

## Staff Summary Report

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**Council Meeting Date:** 12-13-2007

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request to award a five-year, limited source contract to NorthStar, Inc for maintenance and repair services for the liquid/compressed natural gas fueling station at the East Valley Bus Operations and Maintenance Facility.

**DOCUMENT NAME:** 20071213fslg01 **PURCHASES (1004-01)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** (Limited Source #08-077) Total cost for this contract shall not exceed \$2,300,000 during the contract period.

**PREPARED BY:** Lisa Goodman, CPPB, Procurement Officer, 480-350-8533

**REVIEWED BY:** Michael Greene, CPM, Central Services Administrator, 480-350-8516

**LEGAL REVIEW AS  
TO CONTRACT FORM  
ONLY:** N/A

**FISCAL NOTE:** Sufficient funds have been appropriated in 3914-6672

**RECOMMENDATION:** Award the contract.

**ADDITIONAL INFO:** City staff recommends the approval of a five-year limited source agreement with NorthStar, Ltd, for the provision of preventative/corrective maintenance services for the liquid/compressed natural gas fuel station located at the East Valley Bus Operations and Maintenance Facility (EVBOMF). The agreement allows for one extension for a period of four years and ten months.

NorthStar, Ltd was competitively selected by D.L. Withers, the City's construction manager at risk, to design, construct, and maintain the liquid/compressed natural gas fueling station. RNL Design, the City's firm for design of the East Valley Bus Operations and Maintenance Facility, retained a sub-contractor, Fuel Solutions, to assist with the development of facility specifications and bid response evaluation. Fuel Solutions concluded that NorthStar's proposal was not only technically superior but also less expensive in terms of both construction and maintenance.

A design, build, and maintenance contract was issued to ensure that the firm selected to build the facility would be responsible for maintaining it as it was recognized that a secondary firm would not possess the technological or proprietary information necessary to properly maintain the built facility. However, the contract between D.L. Whithers and NorthStar, Ltd. specifically states that following project completion, the city must execute a separate contract with NorthStar, Ltd. for preventative/corrective maintenance. City staff, including representatives from Engineering, Risk Management, City Attorney's Office, Financial Services, and Transportation concluded that, under the circumstances, a limited source procurement is required to execute the final piece of the design, build, and maintenance contract with NorthStar, Ltd.

# Memorandum

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TO: Donna Littrell, CPPB  
Central Services Administrator

FM: Blower Kephart 11/26/2007  
Name of Department Head (Director/Chief) Date  
Public Works  
Name of Department

## SUB: Limited Source Determination

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As Head of the City Department for which the needed professional service will be contracted, I have made a determination that only one (1) reasonable and practicable professional services provider exists. As such, I am authorizing the City Procurement Office to work with my Department to negotiate an acceptable contract with:

NorthStar, Inc.  
Name of Professional Services Provider

### Description of Professional Service to be provided:

NorthStar, Inc. shall provide all maintenance (preventative and corrective) as required for up to a period of ten (10) years to keep the liquid/compressed natural gas (L/CNG) facility fully functional in accordance with the maintenance and performance specifications detailed in the Technical and Performance Requirements to Design, Construct, and Maintain a Liquefied Natural Gas Bus-Fueling Facility for the City of Tempe (Exhibit A to proposed purchase agreement).

See attached memo for more information.

Refer to Requisition No. \_\_\_\_\_, dated \_\_\_\_\_ which has been transmitted to the City Procurement Office to initiate this Limited Source purchase.

My (customer) department contact for this procurement is Greg Jordan at Ext. 2094.

My Limited Source determination is based upon extensive research conducted by my department as to possible providers and a written justification is attached for City Procurement Office records.

As related to this contract, there are no conflicts of interest, legal, ethical or preference issues which would compromise my (customer) department or the resulting contract.

Department Head's Signature



Date

11/26/07

City Procurement Ordinance 97.55 Sec. 26A-9 identifies the basis for a Limited Source procurement as follows:

"If the director of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the city, will otherwise impair the city's financial interests or will substantially impede the city's administrative functions or the delivery of services to the public; or if only one provider has the experience and capability to successfully perform the contract; or if the need was not known in sufficient time to allow for competitive procurement and time is of the essence. The director of the using department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the procurement office with a requisition for the procurement."

Unless the director of the using department makes a limited source determination, the procurement office shall issue competitive solicitations for the professional services.

Professional service contracts shall be reviewed by the city risk manager and city attorney before signing; and contracts with a dollar value expected to exceed the dollar value requiring council approval shall be submitted for such review and approval.

# Memorandum



Public Works Department

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November 21, 2007

To: Carlos de Leon – Deputy Public Works Manager

Fr: Greg Jordan – Transit Administrator

Re: Justification for Limited Source Procurement – NorthStar, Ltd.

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## **Limited Source Procurement Request**

City staff recommend that approval and execution of a limited source agreement with NorthStar, Ltd, for the provision of preventative/corrective maintenance services for the liquid/compressed natural gas fuel station located at the East Valley Bus Operations and Maintenance Facility (EVBOMF).

### *NorthStar Selection for L/CNG Construction and Maintenance*

NorthStar, Ltd was competitively selected by D.L. Withers, the City's construction manager at risk, to design, construct, and maintain the liquid/compressed natural gas fueling station. A design, build, and maintain contract was issued to ensure that the firm selected to build the facility would be responsible for maintaining it as it was recognized that a secondary firm would not possess the technological or proprietary information necessary to properly maintain the built facility.

After a rigorous qualifications-based selection process, the RNL design team, which included Fuel Solutions, was hired by the City to design the EVBOMF. Fuel Solutions, as part of the RNL design team, was selected by the City to develop specifications for the L/CNG fueling facility and to participate in conducting the bid process for the L/CNG fueling facility. Under the design contract with RNL, Fuel Solutions' design task also included the responsibility to prepare the request for proposal and aid the City and DL Withers in reviewing the submitted responses for the construction and maintenance of the L/CNG facility.

There were two bids received for the L/CNG fueling facility, Caliente Construction and Northstar Ltd. Based on Fuel Solution's analysis, the construction cost submitted by Northstar was lower by \$67,000. When the projected 10 years of operations and maintenance costs were compared, the NorthStar proposal showed to be \$252,000 less expensive. Fuel Solution's also concluded that based on the submitted response to the request for proposals, Northstar was the best and most technically qualified firm to perform the work.

### *Limited Source Procurement to Activate Maintenance Agreement*

During the design and construction portions of the project, NorthStar's formal contractual relationship was with D.L. Whithers. However, the contract between D.L. Whithers and NorthStar, Ltd. specifically states that following project completion, the city must execute a separate contract with NorthStar, Ltd. for preventative/corrective maintenance. Representatives from the following divisions concluded, under the circumstances, a limited source procurement is required to execute the final piece of the design, build, and maintain contract with NorthStar, Ltd.

- Engineering - Andy Goh
- Risk Management - Laura Guerrero
- City Attorney's Office - Mary Wade
- Financial Services - Lisa Goodman
- Transportation - Carlos de Leon

### **Scope of Work**

NorthStar shall provide maintenance and repair services for the LNG/LCNG refueling station at the East Valley Bus Operations and Maintenance Facility located at 2091 West Rio Salado Parkway, Tempe, AZ 85281. The contractor will be required to perform preventative and corrective maintenance as required to keep the facility fully functional in accordance with the maintenance and performance specifications detailed in the "Technical and Performance Requirements to Design, Construct, and Maintain a Liquefied Natural Gas Bus-Fueling Facility for the City of Tempe", which shall include all labor, consumables, repair, rebuild and replacement costs. The contractor shall provide all preventative maintenance (PM) and corrective maintenance (CM) for the entire facility by experienced and qualified personnel. PM shall include all weekly, monthly and annual service as required and recommended by the manufacturers of the systems and components associated with operation and maintenance of the facility. The contractor shall provide the City with a schedule of all planned PM activities and shall ensure that all such activities do not interfere with regular bus fueling.

Duration - Contractor shall provide and pay for all maintenance for a period of five (5) years following acceptance of the Facility as completed by the City. One option period of five (5) years may be executed at the discretion of the City.

Exceptions - The only costs associated with maintenance and operation of the Facility that are not the responsibility of the Contractor are those related to damage, neglect or misuse not caused or controlled by the Contractor, such as a dispenser drive-away by a City driver.

Reporting of Preventative and Corrective Maintenance - Contractor shall submit to the City every three months, records of all scheduled and unscheduled maintenance and repairs performed on the Facility. Contractor shall submit maintenance records through the term of the contract, and shall include reports on any failures, accidents and other significant events.

Please feel free to contact me with any comments or questions at 480-858-2094 or [greg\\_jordan@tempe.gov](mailto:greg_jordan@tempe.gov).

Thank you.

**Purchase Agreement #08-077**

This Agreement is attached to the Limited Source Agreement Award Notice and made a part thereof and is entered into by the City of Tempe (the "City") and NorthStar, Inc. ("Contractor").

The parties agree as follows:

**1. Scope of Work**

Contractor shall provide maintenance and repair services for the LNG/LCNG refueling station at the East Valley Bus Operations and Maintenance Facility (the "Facility") located at 2091 West Rio Salado Parkway, Tempe, AZ 85281.

A. General - Contractor shall provide all maintenance (preventative and corrective) as required to keep the Facility fully functional in accordance with the maintenance and performance specifications detailed in the "Technical and Performance Requirements to Design, Construct, and Maintain a Liquefied Natural Gas Bus-Fueling Facility for the City of Tempe" (Exhibit A) which shall include all labor, consumables, repair, rebuild and replacement costs. Contractor shall provide all preventative maintenance (PM) and corrective maintenance (CM) for the entire facility by experienced and qualified personnel. PM shall include all weekly, monthly and annual service as required and recommended by the manufacturers of the systems and components associated with operation and maintenance of the Facility (Listing of systems and components and their manufacturers is provided in Exhibit B). Contractor shall provide the City with a schedule of all planned PM activities and shall ensure that all such activities do not interfere with regular bus fueling.

B. Duration - Contractor shall provide and pay for all maintenance for a period of five (5) years following acceptance of the Facility as completed by the City. One option period of four (4) years and ten (10) months may be executed at the discretion of the City.

C. Exceptions - The only costs associated with maintenance and operation of the Facility that are not the responsibility of the Contractor are those related to damage, neglect or misuse not caused or controlled by the Contractor, such as a dispenser drive-away by a City driver.

D. Reporting of Preventative and Corrective Maintenance - Contractor shall submit to the City every three months, records of all scheduled and unscheduled maintenance and repairs performed on the Facility. Contractor shall submit maintenance records through the term of the contract, and shall include reports on any failures, accidents and other significant events.

E. Timing of PM Service - Contractor shall perform required PM services 24 hours a day, seven days a week, as may be required to ensure the specified fueling performance. Contractor may perform scheduled and unscheduled maintenance and repairs at his discretion, provided that facility's fueling function and vehicle-yard circulation are not impacted.

**F. Callout Service:**

- i. Critical Service - Critical-service problems (which prevent bus fueling, disable a safety system, or cause a natural gas leak) or that otherwise impact the ability of buses to meet scheduled rollout, must be responded to by Contractor within 90 minutes of notification, and successful repairs performed within 3 hours. Liquidated damage conditions shall apply regardless of response or repair time.

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ii. Non-Critical Service - Non-critical service problems (those which do not meet the criteria of critical service problems, specified in section G-i above, or that otherwise do not impact the ability of buses to meet scheduled rollout) must be responded to by Contractor within 4 hours of notification, and successful repairs performed within 24 hours.

G. Software - The right and license to use any software needed to operate and maintain the facilities shall be transferred to City, along with all LNG/LCNG Fueling Facility maintenance records and electronic records, programs and files upon termination of the Contract.

**2. Pricing - Pricing is as follows:**

<u>Description</u>	<u>Price</u>
Base Maintenance	\$25,000.00 per month
Fuel Use	\$0.04 per gallon

Pricing is subject to annual adjustment for inflation using the Consumer Price Index for the Phoenix – Mesa area; however, adjustments are capped annually at 3%.

**3. Term of Agreement**

To begin after award of agreement on November 9, 2007, but retroactive to September 1, 2007, and shall be effective until June 30, 2012.

**4. Agreement Termination**

At any time prior to the delivery of the product or service, this agreement may be terminated without default by either party by providing a written 30-day notice of termination to the other party.

**5. Default Provisions**

This agreement is critical to the City and the City reserves the right to immediately cancel the whole or any part of this agreement due to failure of the Contractor to carry out any obligation, term, or condition of the agreement. The City will issue a written notice of default effective at once and not be deferred by any interval of time, except for the exclusions set forth in Section 7 below. Default shall be for acting or failing to act as in any of the following:

- A. The Contractor provides material that does not meet the specifications of the agreement;
- B. The Contractor fails to adequately perform the services set forth in the specifications of the agreement;
- C. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the agreement;
- D. The Contractor fails to make progress in the performance of the agreement and/or gives the City reason to believe that the Contractor will not or cannot perform to the requirements of the agreement.

The City may resort to any single or combination of the following remedies:

- A. Cancel this agreement;
- B. Reserve all rights or claims to damage for breach of any covenants of the agreement;
- C. Perform any test or analysis on materials (equipment/products) for compliance with the specifications of the agreement. If the results of any test or analysis find a material non-compliance with the specifications, the Contractor hereby expressly agrees that the actual expense of testing will be borne by the Contractor;



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- D. In case of default, the City reserves the right to purchase materials and/or services from another source, or to complete the required work in accordance with the needs of the City. The City may recover any actual excess costs from the Contractor by:
- i) Deduction from an unpaid balance;
  - ii) Collection against the bid and/or performance bond, or;
  - iii) Any combination of the above or any other remedies as provided by law.

**6. Liquidated Damages**

The operation of the LNG/LCNG refueling station at the East Valley Bus Operations and Maintenance Facility is critical to the City and the City reserves the right to assess liquidated damages for failure to perform.

Upon acceptance of the Facility as completed by the City, Contractor shall be responsible for meeting the LNG fuel dispensing specifications detailed in Exhibit A, except for scheduled down time for preventative maintenance as approved by the City.

In any event that City vehicles require fueling at an outside location due to the Facility failing to meet the fuel-dispensing specifications as set forth in Exhibit A, the Contractor will be subject to liquidated damages of \$250 per bus per day. These damages will be assessed by withholding equivalent dollar amounts from payments owed Contractor by the City for fuel consumed at the Facility.

**7. Exclusions**

- A. Maintenance costs are based on confidence in the design of the NorthStar L/CNG system. If and when the future L/CNG equipment is added by another vendor, Contractor reserves the right to renegotiate O&M costs.
- B. Failure of any of the utility services listed below could cause the Facility to not operate. In the event of a utility failure, liquidated damages would not apply.
- i) Control air supply from the maintenance building to the containment area.
  - ii) Telephone service to the LNG control cabinet.
  - iii) Power metering and the main electrical service to the control panel.
  - iv) Auxiliary power generation.
- C. Although lightning protection is provided for the LNG storage tanks, and surge protection will be in place on the main electrical feed upstream of our control panel, it is impossible to prevent any and all possible damage from a lightning strike. In the event of a station failure from a lightning strike, liquidated damages would not apply.

**8. Applicable Law**

This agreement 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 resultant agreement or in statutes or ordinances pertaining specifically to the City. This agreement shall be governed by State of Arizona law and suits pertaining to this agreement may only be brought in courts located in Maricopa County, Arizona.

**9. Infringement of Patent or Copyright**

The Contractor agrees to save, keep, hold harmless and fully indemnify the City and any of its officers and employees from any and all damages, costs, or expenses in law or equity, that may at any time arise out of or be set up for any infringement of the patent right, copyright, intellectual property or trademark of any person or persons in consequences of use by the City, or by any of its officers, or agents or employees of Contractor supplied materials and of which the Contractor is not a patentee or signee or lawfully entitled to sell or use or provide the same.

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Contractor (Seller) agrees to fully indemnify and hold harmless the City (buyer) from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City's (buyer's) purchase and use of goods, including software, supplied by Contractor (seller).

It is expressly agreed by seller that these covenants are irrevocable and perpetual.

### **10. Insurance**

Prior to commencing services under this agreement, Contractor shall procure and maintain for the duration of the agreement 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, his agents, representatives, employees, Subcontractors, or sub-Subcontractors.

An Agreement Award Notice or Purchase Order will not be issued to an awarded vendor until receipt of all required insurance documents by the City Procurement Office and such documents must meet all requirements of this Insurance clause. In addition, before any agreement is renewed for additional time periods, all required insurance must be in force and on file with the City Procurement Office. An awarded vendor or Contractor must submit required insurance within 10 calendar days after request by the City Procurement Office or the award may be rescinded and another vendor selected for award.

#### **Minimum Limits of Insurance**

Contractor shall maintain limits no less than

- A. Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.
- C. Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.
- D. Contractor's Pollution Liability: Liability coverage with project-specific limits of \$1,000,000 per loss and a \$2,000,000 annual aggregate for losses caused by pollution conditions that arise from the operations of the contractor as specified in the contract's Scope of Work and which shall include:
  - 1. bodily injury sickness, disease, death, mental anguish or shock;
  - 2. property damage, including physical injury, to or destruction of property Including loss of use, clean up costs, and loss of use of property not physically injured nor destroyed; and
  - 3. defense costs, including charges and expenses for investigation and claims adjustment.

## **Purchase Agreement #08-077**

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

### **Other Insurance Provisions**

The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

#### **A. Commercial General Liability and Automobile Liability Coverage:**

- i) The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers, for work related to the Contractors, employees, agents, Subcontractors, or sub-Subcontractors activities.
- ii) The Contractor's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
- iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.
- iv) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### **B. Workers' Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

#### **C. All Coverages**

Each insurance policy required by this agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

### **Other Insurance Requirements: Contractor shall:**

- A. Prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City which shall clearly evidence all insurance required in this agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to and approval by the City, and in accord with stated insurance requirements of this bid solicitation. 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 waiver of City's right to insist on, strict fulfillment of Contractor's obligations under this agreement.

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- B. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.
- C. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- D. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during the agreement term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this agreement, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this agreement effective on the date of such lapse of insurance.
- E. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.
- F. Maintain such coverage continuously throughout the term of this agreement and without lapse for a period of two years beyond the agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the agreement term give rise to the claims made after expiration of the agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

**Subcontractors and Sub-Subcontractors**

Contractor shall include all Subcontractors and sub-Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor and sub-Subcontractor. All coverage for Subcontractors and sub-Subcontractors shall be subject to all of the requirements stated herein for the Contractor.

**16. Safety**

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.

**11. Payments - After Acceptance of Delivery**

Payment in full shall be made to the Contractor within thirty (30) days after receipt of accurate invoice reflecting the fixed monthly cost and the variable cost associated with fuel use in gallons.

**12. 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 negligent 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 agreement. 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 there from, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the

## **Purchase Agreement #08-077**

performance of this agreement by Contractor or any employee of the Contractor, or any other person (not the City) for whose negligent 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.

**13. Unauthorized Firearms & Explosives**

No person conducting business on City property is to carry a firearm or explosive of any type. Any City bidder, Contractor or Subcontractor is to honor this requirement at all times and failure to honor this requirement will result in agreement cancellation. This requirement also applies to persons who maintain a concealed weapons permit. In addition to agreement cancellation anyone carrying a firearm or explosive device will be subject to police and legal action.

**14. Whole Agreement**

This Agreement (including Exhibits A and B) represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

**15. Ownership of Documents**

All work products (electronically or manually generated) including but not limited to preventative maintenance schedules, maintenance records, maintenance manuals, inventory lists, and other related products which are prepared in the performance of this Agreement are the property of the City and are to be delivered to the City before the final payment is made to the Contractor.

**16. Nondiscrimination**

The parties agree to comply with all applicable state and federal laws, rules, regulation and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

**17. Conflict of Interest**

This Agreement is subject to Section 38-511, Arizona Revised Statutes. This agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is an employee, consultant, or agent of any other party to this Agreement.

**18. Arbitration**

Notice is provided of Sections 12-1518 and 12-133, Arizona Revised Statutes.

**19. Dispute Resolution**

If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Law.

**20. Contractor's Records**

To the extent required by Section 35-214, Arizona Revised Statutes, Contractor agrees to retain all records relating to this Agreement. Contractor agrees to make those records available at all reasonable times for inspection and audit by the Auditor of the City of Tempe during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.

**Purchase Agreement #08-077**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the \_\_\_\_ day of \_\_\_\_\_, 2007.

*City of Tempe*

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*NorthStar, Inc.*

  
\_\_\_\_\_  
Mark Oldham, Vice-President