



**City of Phoenix**  
OFFICE OF THE CITY ENGINEER  
DESIGN AND CONSTRUCTION PROCUREMENT  
200 W. Washington Street, 5<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611

**PUBLIC TRANSIT DEPARTMENT  
LIGHT RAIL EXTENSION  
CONSTRUCTION ADMINISTRATION AND INSPECTION  
ON-CALL SERVICES**

**RFx6000001281**

**NOTIFICATION LETTER NO. 1**

**July 29, 2022**

This notification letter shall become part of the Request for Qualifications for the above referenced project.

RFQ posted on City of Phoenix Solicitations webpage and City of Phoenix's ProcurePHX system:

**SECTION VIII – GROUNDS FOR DISQUALIFICATION,**

Delete in its entirety:

- Missing DBE Form EO1 and/or supporting documentation (Exhibit A). Note: Please submit as a separate PDF.

Replace with:

- Missing DBE Form EO1 (Exhibit A). Note: Please submit as a separate PDF.

**EXHIBIT A** – Disadvantaged Business Enterprise Clause and Forms; delete in its entirety and replace with the attached Disadvantaged Business Enterprise Clause and Forms.

**QUESTIONS AND ANSWERS:**

1. Can a DBE firm which has this on-call materials contract also be a part of another firm's task order contract to cover for the DBE requirements?

**Answer:** Yes. A DBE firm can be a Prime firm and be a DBE firm for another selected Prime firm.

2. If we include a DBE on our team, do we show them on the EO2 form for each task request?

**Answer:** Yes. Successful firms will be required to conduct DBE/Small Business outreach efforts for each task order including providing completed EO2 form documenting their outreach efforts.

3. Am I correct in assuming that since more outreach is better, then it would be in our best interest to not include subconsultants with our submittal since we have to do outreach anyway?

**Answer:** It's up to each firm to how they put together the SOQ and outreach will be required for each task order.

4. Are the category code and the project number two different things? Are there project numbers for this RFQ?

**Answer:** Yes. The category code and project number are two different things. The category code is the NIGP code used to identify the type of service the city is soliciting for, and all firms registered for this category code are sent an email notifying them of the upcoming solicitation. The project number is an internal City number used to identify the project and earmark funding for payment request (invoice.) For this solicitation there is no project number. If a firm is selected, they will be provided a project number upon execution of the agreement.

5. Item 5D is slightly different from the City's typical RFQ. Can you please elaborate as to the number of contact names/departments you want listed in addition to HR, Invoicing, etc.?

**Answer:** See RFQ Section VI. D. 5.

6. Is there any cross-over between Materials Testing and CA&I?

**Answer:** There may be crossover between Materials Testing and Construction Administration and Inspection Agreements, primarily administrative positions. Selected Materials Testing firms will perform Materials Testing and selected Construction Administration & Inspection firms will perform inspections.

7. What do we do if our rates are lower than the DBE firms rates?

**Answer:** Design and Construction Procurement will negotiate all rates. All subconsultants and DBE firms are independently negotiated through the Prime and are required to align with the City's rate structure.

8. Experience of the Key Personnel - Resumes: Is there a page requirement on resumes? Should they be inserted into a "section B" separate from the other content page numbering? A, C and D should be the 10-max pages. Resumes (B) not part of total? Please clarify I'm understanding this correctly.

**Answer:** There is no page maximum on the resumes. Attach resumes after Criteria D. They do not count towards the maximum 10-page limit.

9. It was stated that you may need proof of certifications. Do you want those with the resumes or at the time if an individual is selected for a task?

**Answer:** Technician and Inspectors certifications may need to be shown at the time of individual's selection of the task.

10. Would it be possible to acquire the City's anticipated sample contract for the subject pursuit: 6000001281-CA&I and/or 6000001282 Materials?

**Answer:** See attachment A.

11. Are any firms with an existing contract with Valley Metro conflicted from the procurement?

**Answer:** No. The agreements are between the selected Prime firm(s) and the City of Phoenix.

12. The pre-submittal presentation indicates that the city may select up to 8 firms for materials (testing) and up to 8 firms for CA&I; the RFQ appears to be written in a manner that expects proposers to submit qualifications for BOTH materials testing and CA&I. Are we to designate one or the other in our response, or BOTH?

**Answer:** You may submit a response for one or both, they are separate solicitations.

13. The RFQ asks that the DBE form is submitted as separate a PDF, should the FTA forms also be submitted separately?

**Answer:** Yes.

14. Is the "supporting documentation" for the DBE outreach requirement comprised of Forms EO2 and EO3? Are there any additional supporting documents required?

**Answer:** Refer to the DBE Negotiated Contract Clause, Section IV, (A)(4) & Section IV, (A)(6). Firms must indicate the method by which each small business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to the DBEs and Small Businesses. The solicitation may be the form of letters, or attachments, emails, phone logs, newspapers and trade papers, outreach events, etc. The supporting documentation may be in the form of emails, letter, or a telephone log, etc.

## **ATTACHMENTS**

- EXHIBIT A - Disadvantaged Business Enterprise Clause and Forms
- Draft Master Agreement

All other terms and conditions remain unchanged.



**Kathleen Kennedy**  
Contracts Specialist  
CITY OF PHOENIX  
DESIGN AND CONSTRUCTION PROCUREMENT

\*\*\*\*\*END OF NOTIFICATION\*\*\*\*\*



## City of Phoenix

### Disadvantaged Business Enterprise (DBE) Program

#### DBE – Negotiated Contract Clause Race & Gender-Neutral – Professional Services On-Call

Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

#### SECTION I. DEFINITIONS

**Agency** means the City of Phoenix for purposes of this Contract.

**Arizona Unified Certification Program (AZUCP)** means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

**Business to Government Now (B2G)** means the web based certification and compliance system used to track and monitor DBE and Small Business Participation. The B2G system can be accessed at: <https://phoenix.diversitycompliance.com>

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

**DBE Compliance Specialist** means an Agency employee responsible for compliance with this DBE Contract Clause.

**EOD** means the City of Phoenix Equal Opportunity Department.

**Joint Venture (JV)** means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

**Outreach Efforts** means the diligent and good faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter shall identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and Small Business participation, disclose results of negotiations with DBEs and Small Businesses, and communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

**Disadvantaged Business Enterprise (DBE)** means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

**Commercially Useful Function** means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

**Goods and Services Providers** are firms that provide goods and services that represent a Commercially Useful Function directly to Transit as a DBE or Small Business.



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**Manufacturer** means a firm that owns, operates or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the recipient, successful submitter, or Transit Vehicle Manufacturer.

**Regular dealer/broker** is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or released to the public in the usual course of business.

**Supplier** means a firm that engages in, as its principal business, the purchase and sale of material or supplies required for the performance of a contract. The firm must own, operate, and maintain a store, warehouse or other establishment where the supplies are bought, kept in stock, and regularly sold to the public in the usual course of business.

**Small Business Concern (SBC)** means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). “Small Business” and “Small Business Concern” are used interchangeably in this DBE Contract Clause.

**Small Business Enterprise (SBE)** means a small business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firms is located at <https://phoenix.diversitycompliance.com>.

**Race- and Gender-Neutral (RGN) Measures** means a measure or program that is, or can be used to assist all Small Businesses.

**Subcontract** means a contract at any tier below the prime contract, including a purchase order.

**Subcontractor** means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

**Submitter** means an individual, partnership, JV, contractor, corporation, or firm that tenders a submittal to the Agency to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.)

**Responsive Submitter** means a firm that has met the minimum program requirements as outlined in the solicitation and due at the time of submittal.

**Successful Submitter** means a firm that has been awarded the contract by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

**Responsible Submitter** means a firm that has been selected to continue in the procurement process by the Agency.

**Transit Vehicle Manufacturers (TVMs)** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

**Transit Vehicle Manufacturers Goals** for FTA recipients each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49.



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#### SECTION II. GENERAL REQUIREMENTS

##### A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.

##### B. DBE Participation

For this solicitation, the Agency has *not* established a race- or gender-*conscious* DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-*neutral* measures to facilitate participation by DBEs and Small Businesses. The Agency *encourages* each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

##### C. Small Business Participation

The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at [www.ecfr.gov](http://www.ecfr.gov) (49 CFR Part 26.39).

##### D. DBE Certification

*Only* firms (1) certified by the Agency or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.

##### E. Civil Rights Assurances

As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance *verbatim*:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate."

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the "contractor" awarded the contract.

#### SECTION III. PRE-AWARD SUBMITTAL REQUIREMENTS

##### FORM EO1 due with initial qualifications-based submittal.

##### A. Form EO1 – Statement of Outreach Commitment

Each Submitter shall sign, date and submit a completed Form EO1 - Statement of Outreach Commitment, with its initial qualifications-based submittal.

##### B. Failure to Submit Form EO1

Submittals that do not have this form completed and signed will be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.



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#### SECTION IV. POST-AWARD SUBMITTAL REQUIREMENTS

The Agency has implemented outreach requirements for this Contract. Specifically, the Successful Submitter shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

Following the award of the contract and prior to the execution of each Task Order, as a matter of compliance, the documentation of outreach efforts **must be submitted and approved on a date to be determined by Contract Owner**:

##### A. Form EO2 - Small Business Outreach Efforts

Successful Submitter shall complete and submit **Form EO2 - Small Business Outreach Efforts**, documenting its diligent, earnest outreach efforts for professional services, as described in this clause.

Form EO2 and all supporting documentation will be due for each request, forms shall be provided with each resume submittal(s) on a date determined by the City and prior to the issuance of a Task Order.

Successful Submitter shall list **All DBEs and Small Businesses** contacted by the Successful Submitter. Successful Submitter shall also provide the following minimum information to document its Outreach Efforts in the designated columns within Form EO2:

##### 1. **Column A - Small Business Name and Contact Information**

Must list each business's full legal name and contact information. Successful Submitter shall inquire to obtain the following: the number of its employees, number of years in business and its estimated range of annual gross receipts.

##### 2. **Column B - Business Status**

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>
- City of Phoenix SBE Certification Directory can be accessed at: <https://phoenix.diversitycompliance.com>

##### 3. **Column C - Scope(s) of Work Solicited**

List the scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation shall include a description of the scope(s) of work being requested.

##### 4. **Column D - Solicitation Method**

Indicate the solicitation method by which each small business was contacted for your outreach efforts, and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to DBEs and Small Businesses. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication



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#### 5. Column E - Selection Decision

Indicate the Successful Submitters selection decision for each small business that responded to the solicitation.

*If selected, indicate the Dollar Value.*

*If not selected, provide an explanation why firm was NOT selected.*

#### 6. Column F - Method of Communication of Final Selection Outcome

The Successful Submitter must notify the final selection outcome to all small businesses that responded. The supporting documentation for this notification may be in the form of an email, letter, or a telephone log, etc. This documentation must show the following information regarding the final selection:

- List the Selection Outcome
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication

\*Successful Submitter shall provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBE's and Small Businesses, including those not chosen to participate in this Contract.

#### B. Form EO3 - Small Business Utilization Commitment

Form EO3 will be due for each request, forms shall be provided with each resume submittal(s) on a date determined by the City and prior to the issuance of a Task Order

The Successful Submitter shall complete, sign, date and submit EO3 - Small Business Utilization Commitment, which commits Successful Submitter to the Agency as follows:

1. The firms indicated as "Selected" on Form EO2 Small Business Outreach Efforts, will participate in this Contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Compliance Specialist for the Contract Owner prior to implementation; and
4. The following statement is true and correct: The proposed total participation of DBE, SBC and SBE firms on this contract will be designated on Form EO3 by the Successful Submitter.

C. **Failure to Meet Outreach Requirements.** The DBE Compliance Specialist will determine, in writing, whether Successful Submitter has satisfied all small business outreach requirements. If the DBE Compliance Specialist determines that Successful Submitter has failed to satisfy the outreach requirements, then the DBE Compliance Specialist may determine that the submittal is noncompliant. The Agency shall send written notice to the Successful Submitter stating the basis for the DBE Compliance Specialist's decision. Failure to fulfill the small business outreach requirements is considered a breach of contract and shall result in a non-compliance determination.

D. **Administrative Reconsideration** If the DBE Compliance Specialist determines that Successful Submitter is non-responsive, the Agency will permit Successful Submitter to request EOD to reconsider this determination. In its request for reconsideration, Successful Submitter may *clarify* its DBE documentation. The Successful Submitter may *not* submit or refer to new or revised documents or information. EOD will only reconsider the original DBE documentation as clarified in the request for reconsideration.





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If Successful Submitter requests EOD to reconsider the Compliance Specialist's determination, Successful Submitter must provide written notice to the Agency and EOD within three (3) business days of the Agency's notice of noncompliance to Successful Submitter. The request for reconsideration should be addressed to:

**City of Phoenix Equal Opportunity Department  
Business Relations Division-Contract Compliance Section  
200 West Washington Street, 15th Floor  
Phoenix, AZ 85003**

With a *copy* e-mailed to the Procurement Officer and the DBE Compliance Specialist.

#### SECTION V. POST-AWARD GENERAL REQUIREMENTS

##### A. Subcontracting Commitment

The small business subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract\* in place prior to the performance of work.

Successful Submitter shall submit to Agency, through the B2G system, all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Submitter and all subcontractors, upon execution throughout the life of this contract.

The Successful Submitter shall not terminate any approved DBE or Small Business Subcontracts, nor shall the Successful Submitter alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist's prior written approval. Any request to alter a DBE or Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Submitter fails to do so, the Agency may declare Successful Submitter in breach of contract.

\*Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

##### B. Counting Small Business Participation

The prime contractor may only count expenditures to AZUCP certified DBE subcontractors that perform a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE subcontractor must perform a minimum of 30% of its subcontract value with its own workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

**Commercially Useful Function & Counting of DBE Trucking/Hauling: 49 CFR Part 26.55 Section (d)** defines Commercially Useful Function and the counting of DBE participation Trucking/Hauling as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation



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services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

- Amounts paid for dump fees or materials being hauled/dumped cannot be counted as DBE participation.

### Counting DBE certified Manufactures, Suppliers, and Brokers:

**49 CFR Part 26.55 Section (e)** permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 percent of the cost of the materials or supplies toward DBE participation.
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60 percent of the cost of the materials or supplies toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, (**broker or manufacturer's rep.**) count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

### **C. Small Business Substitutions or Terminations**

As set forth in 49 CFR Section 26.53 (f)(1)(2)(3) after Contract award, the Agency will not allow substitution or termination from the proposed Small Business utilization except in extraordinary circumstances. The Successful Bidder's request to modify Small Business participation must be in writing to the Phoenix DBE Compliance Specialist.

Successful Bidder's written request must set forth the amount of substitution or why termination is sought, evidence that demonstrates why it is necessary, and any additional relevant information that the Phoenix DBE Compliance Specialist should consider. The Successful Bidder shall include with the request all documentation of Bidder's attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

If the Small Business was approved by the Agency, the Phoenix DBE Compliance Specialist will consider whether or not the Successful Bidder has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Bidder shall notify the Phoenix DBE Compliance Specialist in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Phoenix DBE Compliance Specialist's written approval has been obtained.

### **D. Prompt Payment of Subcontractors**

The prompt payment clause shall be included in every contract and subcontract.

Per A.R.S. § 32-1129.01 the Successful Bidder must promptly pay its subcontractors, subconsultants, or suppliers **within seven (7) calendar days**. If the Successful Bidder diverts any payment received for a DBE's, Small Business's, or other Subcontractor's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Bidder in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Submitter must ensure prompt and full release of retentions to Subcontractors and suppliers when their scope of work is complete and the Agency has paid Successful Submitter for the work. The Successful Submitter shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency has paid for the scope(s) of work, regardless if there's outstanding retention held against the Successful Submitter. If the Agency reduces the Successful Submitter's



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retention, the Successful Submitter shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Successful Submitter from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

#### E. Remedies

If the Successful Bidder fails to comply with these contract provisions and the requirements set forth in 49 CFR 26.101 and 26.103, the Agency may take any one or more of the following actions:

1. Withhold future payments, including retention, until the Successful Submitter is determined to be in compliance;
2. Cancel the Contract

## SECTION VI. RECORDS & REPORTING REQUIREMENTS

### A. Records

During performance of the Contract, the Successful Submitter shall keep all records necessary to document Small Business participation. The Successful Submitter shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation and Change Orders.

### B. Reports

Successful Submitter is required to file the following payment reports in the B2G system:

1. **Progress Payments:** By the 15<sup>th</sup> of *each* month, the Successful Submitter must enter payment information and related supporting documentation into the Agency's web-based certification and compliance reporting system.
  - a. The total of all payments received from the Agency during the previous month.
  - b. All payments made to Subcontractors during the previous month.

The Successful Submitter is responsible for ensuring that subcontractors confirm receipt of payment in the B2G system by the end of each month.

#### 2. Final Payment:

Before the Agency processes the Successful Submitter's final payment and/or outstanding retention held against the Successful Submitter, the Successful Submitter shall notate in the B2G system:

- a. The payment to each subcontractor is considered "Final".
- b. Every subcontractor must confirm they have received full and "Final" payment in the B2G system.
- c. For federal reporting purposes, Attachment E must be completed and signed by the Successful Submitter and DBE firm(s) prior to Successful Submitter receiving final payment

The Successful Submitter is responsible for ensuring that subcontractors confirm the receipt of full and "Final" payment in the B2G system.



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**FORM EO1 STATEMENT OF OUTREACH COMMITMENT**

**Due with initial qualifications-based submittal**

**Professional Services On-Call**

<b>Project Number:</b>	<b>Project Title:</b>
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On behalf of the Submitter, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Submitter, the Successful Submitter will:

- 1) Fulfill all required small business outreach requirements and shall submit all required outreach efforts documentation for contracting opportunities forms will be due for each request, forms shall be provided with each resume submittal(s) on a date determined by the City and prior to the issuance of a Task Order;
- 2) Conduct all required small business outreach and will submit all supporting documentation; and
- 3) Comply with the Race-and-Gender-Neutral post-award requirements stated in the DBE Contract Clause.

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Phoenix Disadvantaged Business Enterprise (DBE) Program**

**Form EO2 SMALL BUSINESS OUTREACH EFFORTS**

**Professional Services On-Call**

Form EO2 and all supporting documentation will be due for each request, forms shall be provided with each resume submittal(s) on a date determined by the City and prior to the issuance of a Task Order.

<b>Name of Company (Submitter):</b>	<b>Contract # / Project #:</b>	<b>Contract Name:</b>
<b>Email:</b>	<b>Phone #:</b>	<b>Point of Contact:</b>

Successful Submitter must conduct outreach efforts and submit supporting documentation of those outreach efforts as described in the Disadvantaged Business Enterprise (DBE) Program Race- and Gender-Neutral Contract Clause (Contract Clause). Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for columns D and F. Successful Submitter should make additional copies of this form as needed.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method (Supporting Documentation Required)	(E) Selection Decision	(F) Communication Final Selection Outcome (Supporting Documentation Required)										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts:	<input type="checkbox"/> DBE  <input type="checkbox"/> SBC - Small Business Concern  <input type="checkbox"/> SBE - City of Phoenix Certified  <input type="checkbox"/> Unknown	<b>List Scope(s) of Work</b>	<input type="checkbox"/> E-mail Blast  <input type="checkbox"/> Phone Call  <input type="checkbox"/> In-Person  <input type="checkbox"/> Newspaper  <input type="checkbox"/> Website  <input type="checkbox"/> Trade Listing  <input type="checkbox"/> Outreach Event  <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected  Dollar Value:  <input type="checkbox"/> Firm was not selected  Provide explanation of why firm NOT selected _____ _____	<p><b>Firms must be notified of final selection outcome prior to submittal of this form.</b></p> Date Firm was Notified:  <hr/> Method used to Communicate Selection:  <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:															
Address:															
City, State, Zip:	Number of Employees:														
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Name:															
Address:															
City, State, Zip:	Number of Employees:														
Phone Number:	Email or Fax:														
Number of Years in Business:	Range of Annual Gross Receipts:														



**City of Phoenix**

**Disadvantaged Business Enterprise (DBE) Program**

**FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT**

Form EO3 will be due for each request, forms shall be provided with each resume submittal(s) on a date determined by the City and prior to the issuance of a Task Order

**Professional Services On-Call**

<b>Project Number:</b>	<b>Project Title:</b>
------------------------	-----------------------

On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct: The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

\$\_\_\_\_\_

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**ATTACHMENT – MASTER AGREEMENT (DRAFT)**

**PUBLIC TRANSIT DEPARTMENT  
LIGHT RAIL EXTENSION  
CONSTRUCTION ADMINISTRATION AND INSPECTION  
ON-CALL SERVICES**

**AGREEMENT** \_\_\_\_\_

DRAFT

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DRAFT



**THIS ON-CALL MASTER AGREEMENT** is entered into by the City of Phoenix, an Arizona municipal corporation (**City**), and **[entity name]**, a/an **[state where formed]** **[entity type (Corp., LLC, etc.)]** (**Consultant**), effective on \_\_\_\_\_ (“**Effective Date**”).

## **RECITALS**

The City Manager of the City of Phoenix, Arizona, is authorized and empowered by provisions of the City Charter and Code to execute Agreements for professional services.

The City proposes to retain the Consultant for Construction Administration and Inspection consulting services for the Light Rail Extension On-Call, on an as-needed on-call basis.

The City requires professional services for various City projects and desires to contract with the Consultant to provide these services.

On \_\_\_\_\_, 20\_\_\_\_, the Phoenix City Council approved Ordinance S-\_\_\_\_, authorizing City to enter into this Master Agreement.

## **AGREEMENT**

In consideration of the foregoing Recitals incorporated by this reference, and the mutual promises contained in this Agreement, City and Consultant agree as follows:

### **SECTION 1 – PROJECT DESCRIPTION**

The City’s authorized contracting office will be Public Transit Department. Requests for services will be issued in the form of a written Task Order document initiated by the Public Transit Department’s Representative and will include a description of the Project, detailed scope of services, project schedule, and the approved fee. **The Consultant must receive notification from the Public Transit Department’s Representative prior to negotiating fees and commencement of services on project assignments under this Master Agreement.** Work will be performed within the metropolitan Phoenix area.

The Consultant, under the general supervision of the City Engineer of the City of Phoenix, will perform the following services as may be requested: **XXXXXXXXXX**

General scope requirements and standards related to design and materials testing services are more fully described in the attached Exhibit G - Scope of Services.

### **SECTION 2 – PERIOD OF SERVICE**

#### **2.1. Period of Service**

The Master Agreement is for a five-year term, commencing on **[insert effective date]** through **[insert expiration date]**. The Consultant will provide services under the Master Agreement for specific project assignments with a Task Order Request

issued no later than the final day of the Master Agreement term. All work associated with the Project assignments under this Master Agreement must be completed no later than one year from the end of the Master Agreement term.

### **SECTION 3 – COMPENSATION AND PAYMENTS**

- 3.1 The maximum fee to be paid to the Consultant under this Master Agreement will not exceed [Insert Contract Capacity Amount \$X,XXX,000].
- 3.2. Subconsultant fees are included as “Additional Services”.
- 3.3. The fees for Consultant are based on the agreed hourly rates, attached and incorporated in **ATTACHMENT 2**. These rates will be in effect for the duration of the Master Agreement and project assignments term.
- 3.4. The Contract fees for the Consultant are based upon the rates provided in Attachment 2 – Billable Rates. Basic service hourly rates are effective through --- ---- and may be negotiated at a period determined by the Project Manager, if exercised by the City. The Consultant will submit rationale and supporting documents for any rate increase request. The City reserves the right to reject rate increases at its sole discretion.
- 3.5. Consultant must submit monthly requests for payment on City’s payment request form, which must include a progress report and detailed invoices (with receipts if applicable). Consultant’s submittal must also include: (1) a narrative description of tasks accomplished during the billing period; (2) a listing of any deliverables submitted; and (3) any subconsultant’s request for payment with similar narratives and listings of their work.
  - 3.5.1. City will pay for any services negotiated as a not-to-exceed fee according to the work effort expended on that service during the month.
  - 3.5.2. City will pay for any services negotiated as a lump sum according to the percentage of work completed during the month.
  - 3.5.3. City will pay for any Additional Services and Allowances as a not-to-exceed fee according to the work effort expended on that service during the month.
- 3.6. Consultant must submit all payment requests for City’s review and approval.
- 3.7. Consultant must pay all sums due to subconsultants for services and reimbursable expenses within seven days of Consultant receiving payment for those services from City. Consultant must pay subconsultants in accordance with Arizona Revised Statute § 34-221.
- 3.8. If authorized by City, Consultant will receive reimbursement at cost for: (1) non-overhead printing expenses incurred in excess of those required for basic services;

- (2) courier services; or (3) other project-related services requested by City.
- 3.9. Additional work, when authorized by an executed contract amendment, will be compensated for by a fee mutually agreed upon between the City and the Consultant.
- 3.10. No compensation to the Consultant will be allowed contrary to Chapter XIX, Section 2, Phoenix City Charter (no payment of more than 90% of the total contract price before completion of the total work).

#### **SECTION 4 – CITY’S RESPONSIBILITY**

- 4.1 City will provide the following to Consultant:
- 4.1.1. Timely examination of Consultant’s submitted documents and prompt decision-making regarding Consultant’s work (and Consultant’s written requests for decisions) to avoid unreasonable delays.
  - 4.1.2. Regular updates concerning City’s progress in reviewing Consultant’s work.
  - 4.1.3. City’s forms required from Consultant.
- 4.2. City is also responsible for hiring the construction contractor, if applicable.
- 4.3. The City’s authorized representative will be the City Engineer or another duly authorized City representative, who will be the sole contact and authority for administering this Agreement. City approvals or requests to Consultant will originate from the City Engineer or another duly authorized City representative.
- 4.4. For each specific project, the City will specify the allocated budget available.

#### **SECTION 5 – CONSULTANT’S RESPONSIBILITIES**

- 5.1. The Consultant must perform professional services to the satisfaction of the City Engineer in accordance with the terms of this Agreement with the degree and with the care and skill that a registered professional in Arizona would exercise under similar conditions. The Consultant may discuss the Project or its requirements with the department that will ultimately use the facility, but all specific project direction or requests must be authorized by the City Engineer.
- 5.2. Consultant must provide the following to City in each project proposal:
- 5.2.1. Scope of Work
  - 5.2.2. Subconsultant Information
  - 5.2.3. Hourly Billable Rates
  - 5.2.4. Project Schedule
  - 5.2.5. DBE Forms EO2 and EO3 and supporting documentation

5.2.6. Resumes

5.3. Consultant must prepare all documents and materials according to the City's standards, scope, and budget, subject to the City Engineer's general inspection.

**SECTION 6 – DEFINITIONS**

**AGREEMENT (OR MASTER AGREEMENT):**

The signed written Agreement between the City and the Consultant which is evidence of the agreement and includes any amendments, exhibits or attachments, all of which form the agreement.

**AGREEMENT AMENDMENT:**

A modification to a Master Agreement signed by the Consultant and City that provides for a change in the Agreement provisions, including additional work outside the scope of the original Master Agreement.

**APPLICABLE LAW:**

Any law, rule, codes, standards, regulation, requirement, policy, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued by, any governmental body having jurisdiction, applicable from time to time to any activities associated with this Agreement, including but not limited to design, construction and permitting or any other transaction or matter contemplated hereby, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of prevailing wages.

**A.R.S.:**

Arizona Revised Statutes.

**CERTIFICATE OF INSURANCE:**

A form acceptable to the City, describing and certifying the insurance coverage obtained by the insured Consultant from an insurer acceptable to the City.

**CITY:**

The City of Phoenix and its agents, employees, and representatives.

**CONSULTANT OR CONTRACTOR:**

The individual, partnership, corporation or company who is entering into this Agreement with the City.

**DAY(S):**

Calendar Days unless otherwise specifically noted.

**DEPARTMENT:**

Department means the City Department overseeing the Agreement.

**EFFECTIVE DATE OF THE AGREEMENT:**

The date indicated in the Agreement on which it becomes effective, which is the date of the Notice to Proceed.

**NOTICE TO PROCEED:**

A written notice given by City to Consultant fixing the date on which the Period of Services begins and the Consultant starts to perform the work.

**PAYMENT REQUEST:**

The City form used by the Consultant to request a progress or final payment and includes all information required to be submitted with the form to substantiate the Consultant's right to payment. Unless otherwise provided, requests for payment must be submitted in the format specified by the City

**SUBCONTRACT:**

Any agreement entered into by the Consultant and subconsultant for a portion of the Scope of Work in connection with, and under the terms of, the Agreement.

**SUBCONSULTANT:**

A person or entity who has a direct contract with the Consultant to perform a portion of the Scope of Work.

**SECTION 7 – GENERAL CONDITIONS**

**7.1. INDEMNIFICATION AND INSURANCE REQUIREMENTS:**

See Indemnification and Insurance Section – **Exhibit A**

**7.2. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER:**

7.2.1. The parties agree that the Consultant is providing the services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of employer and independent contractor. Neither the Consultant nor any of the Consultant's agents, employees or helpers shall be deemed to be the employee, agent, or servant of the City. The City is interested in only the results obtained under this Contract; the manner, means and mode of completing the same are under the sole control of the Consultant.

7.2.2. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Contract. The parties agree that no individual performing under this Agreement on behalf of the Consultant will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules shall accrue to such individual. The Consultant shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other

employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals, and shall save and hold harmless the City with respect thereto.

### **7.3. LEGAL WORKER REQUIREMENTS:**

7.3.1. The City is prohibited by Arizona Revised Statutes § 41-4401 from awarding an agreement to any Consultant who fails, or whose subconsultants fail, to comply with Arizona Revised Statutes § 23-214(A). Therefore, Consultant agrees that:

7.3.1.1. Consultant and each subconsultant it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.

7.3.1.2. A breach of warranty herein will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

7.3.1.3. The City retains the legal right to inspect the papers of the Consultant's or subconsultant's employee(s) who work(s) on this Agreement to ensure that Consultant or subconsultant is complying with the warranty herein.

### **7.4. CONFIDENTIALITY AND DATA SECURITY:**

7.4.1. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Consultant will not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager, or his/her designee.

7.4.2. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.



- 7.4.3. In the event that data collected or obtained by the Consultant in connection with this Agreement is believed to have been compromised, Consultant must immediately notify the City's Project Manager and City Engineer in writing. Consultant agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- 7.4.4. Consultant agrees that the requirements of this Section will be incorporated into all subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 7.4.5. The obligations of Consultant under this Section will survive the termination of this Agreement.

## **7.5. PROJECT DOCUMENT AND COPYRIGHTS**

- 7.5.1. City Ownership of Project Documents All work products (electronically or manually generated) including, but not limited to: plans, Specifications, cost estimates, tracings, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) file diskettes which reflect all final drawings, and other related documents which are prepared in the performance of this Contract (collectively referred to as "Documents") are to be and remain the property of the City and are to be delivered to the City Representative before the final payment is made to the Consultant. In the event these Documents are altered, modified or adapted without the written consent of the Consultant, which consent the Consultant will not unreasonably withhold, the City agrees to hold the Consultant harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adaptation of the Documents.
- 7.5.2. Consultant to Retain Copyrights The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Consultant, its subconsultants or personnel, during the course of performing this Contract or arising out of the Work will belong to the Consultant.
- 7.5.3. License to City for Reasonable Use With this Contract, the Consultant and its subconsultants hereby grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of the Work and this Contract. This license also includes the making of derivative works.

7.5.4. Documents to Bear Seal The Consultant and its subconsultants will endorse by professional seal all plans, works, and deliverables prepared by each for this Contract as required by state law.

## **7.6. CONTACTS WITH THIRD PARTIES:**

7.6.1. Consultant or its subconsultants will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Consultant or its subconsultants be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Consultant or its subconsultants will promptly inform the City giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Consultant and its subconsultants under this Section will survive the termination of this Agreement.

7.7.2. Consultant agrees that the requirements of this Section will be incorporated into all subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

7.7.3. The obligations of Consultant under this Section will survive the termination of this Agreement.

## **7.8. RECORDS / AUDIT:**

7.8.1. Under generally accepted accounting principles, Consultant must keep records of: (1) accounts with the City; (2) direct personnel payroll; and (3) reimbursable expenses pertaining to the bond (construction) and insurance expenses for the contract. Consultant must make these records available to City for at least five years following Final Acceptance.

7.8.2. The City, its authorized representative, and/or the appropriate federal agency reserves the right to audit the records of Consultant and Subconsultants to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Agreement and related documents (e.g., modifications). If an audit reveals that a Consultant or Subconsultant(s) has provided false, misleading, or inaccurate cost and pricing data, City reserves the rights to: (1) decrease the Agreement's price; (2) reduce or withhold City's payments under the Agreement; or (3) demand reimbursement from Consultant. City reserves the right, at reasonable times, to audit Consultant's books and records relative to the performance of service under this Agreement.



7.8.3. Consultant must include similar requirements in all contracts with Subconsultants providing services under the Agreement. If Consultant fails to include the above provisions in all contracts with Subconsultants providing services under the Agreement—and any Subconsultants refuses to allow City to audit records to verify proper cost and pricing data—City reserves the right to: (1) decrease the Agreement’s price; (2) reduce or withhold City’s payments under the Agreement; or (3) demand reimbursement from Consultant.

7.8.4. If, following an audit of this Agreement, the audit discloses the Consultant has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Consultant will be liable for reimbursement of the reasonable, actual cost of the audit.

## **7.9. COMPLIANCE WITH LAWS:**

Consultant will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to this Agreement. Consultant is also required to certify its compliance with all applicable laws and Consultant will pass along these requirements to its subconsultants. If any of Consultant’s certifications is found to be false, the City may terminate this Agreement or impose other remedies due to the false certification.

## **7.10. ALTERATION IN CHARACTER OF WORK:**

Whenever a change in the scope of work results in a substantial revision to this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, an Agreement Amendment shall be approved and executed by the City and the Consultant. Such Agreement Amendment shall not be effective until approved by the City. Additions to, modifications, or deletions from the services provided herein may be made, and the compensation to be paid to the Consultant may accordingly be adjusted by mutual agreement of the parties. It is understood and agreed that no claim for extra work done or materials furnished by the Consultant will be allowed by the City except as provided herein, nor shall the Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Consultant without such written authorization first being given, shall be at the Consultant’s own risk, cost, and expense, and the Consultant hereby agrees that without written authorization the Consultant will make no claim for compensation for such work or materials furnished.

### **7.11. INTEGRATION:**

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party will be bound by or liable for any statement of intention not so set forth.

### **7.12. GOVERNING LAW; FORUM; VENUE:**

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

### **7.13. TERMINATION OR SUSPENSION OF SERVICES:**

7.13.1. **CITY'S RIGHT TO TERMINATE:** The City reserves the right to terminate this Agreement without cause, or to abandon the Services, or any part of the Services not then completed, by notifying Consultant in writing. Immediately upon receiving a written notice to terminate or suspend Services, Consultant will:

7.13.1.1. Discontinue advancing the work in progress, or such part that is described in the notice.

7.13.1.2. Deliver to the City all drawings, plans, specifications, special provisions, estimates, and other work entirely or partially completed—together with all unused materials supplied to or purchased by City.

7.13.1.3. Appraise any work partially completed and submit that appraisal to City for evaluation.

7.13.1.4. Be paid full compensation for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Consultant in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.

7.13.1.5. If the City determines it improperly terminated the agreement for cause or default, the termination shall be converted to a termination for convenience in accordance with the provisions of this agreement.

7.13.2. **TEMPORARY SUSPENSION:** The City may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and not due to fault or negligence of Consultant, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.

#### **7.14. SPECIFIC PERFORMANCE:**

Consultant agrees that in the event of a breach by Consultant of any material provision of this Agreement, the City will, upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this Agreement. In the event the City will elect to treat any such breach on the part of Consultant as a discharge of the Agreement, the City may nevertheless maintain an action to recover damages arising out of such breach. This paragraph is not intended as a limitation of such other remedies as may be available to the City under law or equity.

#### **7.15. FORCE MAJEURE:**

If either party is delayed or prevented from the performance of any service, in whole or part, required under this Agreement by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

#### **7.16. DOCUMENTATION:**

7.16.1. **DISSEMINATION AND RETENTION:** There will be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Consultant will

relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Consultant pending the resolution of the existing or anticipated litigation.

- 7.16.2. Format and quality: all documents prepared by Consultant will be prepared in a format and at a quality approved by the City.
- 7.16.3. Document review: Consultant will review all documents provided by the City related to the performance of the services and will promptly notify the City of any defects or deficiencies discovered in such review.
- 7.16.4. Confidentiality of plans: any plans Consultant generates must include the following statement in the title block on every page: "under Phoenix City Code § 2-28, these plans are for official use only and may not be shared with others unless otherwise permitted by contract to fulfill Consultant's obligations to City."

#### **7.17. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:**

Consultant will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which Services are performed will not be used in any advertising or other promotional context by Consultant without the prior written consent of the City.

#### **7.18. CONFLICTS OF INTEREST:**

- 7.18.1. Consultant acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.
- 7.18.2. The City reserves the right to immediately terminate the contract in the event that the City determines that Consultant has an actual or apparent conflict of interest.
- 7.18.3. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with

respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Consultant, terminate the right of Consultant to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Consultant as could be pursued in the event of default by Consultant.

7.18.4. This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

#### **7.19. NOTICE:**

To evaluate and avoid potential conflicts of interest, the Consultant shall provide written notice to the City, as set forth in this Section, of any work or services performed by the Consultant for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven business days prior to commencement of the services by the Consultant for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to:

City of Phoenix  
Office of the City Engineer  
Design and Construction Procurement  
200 W. Washington Street, Fifth Floor  
Phoenix, Arizona 85003-1611

#### **7.20. PUBLIC RECORDS:**

7.20.1. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Consultant acknowledges that all documents provided to the City may be subject to disclosure by laws related to public records. Consequently, the Consultant understands that disclosure of some or all of the items subject to this Agreement may be required by law.

7.20.2. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which will be deemed given when deposited by the City with the USPS for regular delivery to the address of the Consultant specified in this Agreement. Within ten calendar days of notice from the City, the Consultant must inform the City in writing of any objection by the Consultant to the disclosure of the requested information. Failure by the Consultant to object within ten calendar days of notice will be deemed to waive any objection and any remedy against the City for disclosure.

7.20.3. In the event the Consultant objects to disclosure within ten calendar days, the Consultant agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Consultant does not object thereto. Furthermore, the Consultant agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

**7.21. CLAIMS OR DEMANDS AGAINST THE CITY:**

7.21.1. Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Consultant agrees to adhere to the prescribed procedure for presentation of claims and demands.

7.21.2. Pursuant to Phoenix City Charter Chapter 18, the City reserves the right to withhold funds from the Consultant's progress payments up to the amount equal to the claims the City may have against the Consultant until such time that a settlement on those claims has been reached.

7.21.3. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

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

**7.22. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:**

Consultant waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by the termination, a legal proceeding, or a business decision by the City, directly or indirectly, involving any part of this Agreement.

**7.23. DISPUTES:**



- 7.23.1. The City Engineer will decide any dispute regarding this Agreement's interpretation that City and Consultant cannot resolve by mutual agreement.
- 7.23.2. Consultant agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement each party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.
- 7.23.3. Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement will not be deemed a waiver.

**7.24. THIRD PARTY BENEFICIARY CLAUSE:**

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

**7.25. LAWFUL PRESENCE REQUIREMENT:**

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

**7.26. EQUAL EMPLOYMENT OPPORTUNITY:**

- 7.26.1. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
- 7.26.2. For a Consultant with 35 employees or fewer: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair

employment practice. The Consultant will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, Consultant agreements or subleases of this agreement entered into by supplier/lessee.

- 7.26.3. For a Consultant with more than 35 employees: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Consultant will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Consultant further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Consultant further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.
- 7.26.4. Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
- 7.26.5. Monitoring: The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this



article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

#### **7.27. SUCCESSORS AND ASSIGNS:**

For this Agreement's covenants, Consultant and City bind themselves and their partners, successors, assigns, and legal representatives to the other. Consultant and City may not assign, sublet, or transfer their interest in this Agreement without the other's written consent. This Agreement does not create a contractual relationship with any third party, or otherwise establish any third-party beneficiaries.

#### **7.28. CONSULTANT'S DUTY OF CARE:**

The Consultant will be responsible for the completeness and accuracy of its work and all documents and materials prepared or compiled by Consultant for the City under this Contract. Consultant is responsible for correcting, at its expense, willful or negligent errors, omissions and acts that may be discovered with Consultant's work and all documents and materials prepared or compiled by Consultant for the City under this Contract. Any damage or increased cost incurred by the City as a result of such willful or negligent errors, omissions or acts will be chargeable to the Consultant to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill applicable to consultants practicing this trade or specialty profession in Phoenix, Arizona under similar conditions. The fact that the City has accepted or approved the Consultant's work will in no way relieve Consultant of any of its duty of care responsibilities.

#### **7.29. PROJECT STAFFING:**

7.29.1. **KEY PERSONNEL:** Before starting work, Consultant must submit detailed résumés of key personnel involved in that work for City's approval (which City will not unreasonably withhold). If Consultant later desires to change key personnel involved in that work, Consultant must submit detailed résumés of the new personnel for City's approval (which City will not unreasonably withhold).

7.29.2. **QUALIFIED STAFF:** Consultant must maintain an adequate and competent staff of qualified persons—as City may determine in its sole discretion—during performance of this Agreement. If City in its sole discretion determines that any of Consultant's staff is objectionable, Consultant must take prompt corrective action or replace that staff with new personnel, subject to City's approval.

#### **7.30. SUBCONSULTANTS:**

7.30.1. Before starting work, Consultant must furnish the names of its

subconsultants for City's approval (which City will not unreasonably withhold). If Consultant later desires to change subconsultants, Consultant must submit the names of its new subconsultants for City's approval (which City will not unreasonably withhold).

7.30.2. **SUBCONSULTANTS:** Consultant must include similar requirements in all contracts with subconsultants providing services under the Agreement.

**7.31. NON-WAIVER PROVISION:**

City and Consultant may not construe a failure of the other to enforce—or require performance of—any of this Agreement's provisions to be a waiver of that provision. Such failure will not affect the validity of any part of this Agreement or the right of City or Consultant to enforce every provision.

**7.32. SURVIVAL:**

All warranties, representations, and indemnifications by Consultant will survive this Agreement's completion or termination.

**7.33. SEVERABILITY:**

If any provision or application of this Agreement is invalid, illegal, or unenforceable, then the Agreement's remainder remains unaffected and enforceable to the fullest extent permitted by law.

**7.34. TIME IS OF THE ESSENCE:**

The time for each term, covenant, and condition of this Agreement is of the essence.

**7.35. DATE OF PERFORMANCE:**

If the date of performance for any obligation—or the last day of any time period—falls on a Saturday, Sunday, or one of the City's holidays, then that period will extend to the next day that is not a Saturday, Sunday, or holiday. Unless otherwise provided, any performance due on a particular day is only timely if completed by 5 p.m. (Phoenix time) and no later.

**7.36. WORK IN CITY'S RIGHT-OF-WAY:**

All work that Consultant performs within City's right-of-way must comply with City's Traffic Barricade Manual and Right-of-Way Management Program. Consultant is subject to civil sanctions for temporary traffic-control violations.

7.36.1. All Work performed within the City's Right-of-Way by the Consultant and its subconsultants will comply with all the regulations contained in the City

of Phoenix Traffic Barricade Manual and the City of Phoenix Right-of-Way Management Program (latest editions) and any other traffic control provisions as may be provided in the technical Specifications. The City of Phoenix Traffic Barricade Manual is available online at:

<http://www.phoenix.gov/STREETS/traffic-management>

Consultant is subject to civil sanctions for temporary traffic-control violations.

### **7.37. CONTRACT AMENDMENTS:**

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Consultant. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Consultant. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

### **7.38. REQUEST FOR CONTRACT ADJUSTMENTS AND RELIEF:**

- 7.38.1 If either the Consultant or the City believes that it is entitled to relief against the other for any event arising out of or related to Contract Services, such party will provide written notice to the other party of the basis for its claim for relief.
- 7.38.2 Such notice will, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 7.38.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 7 Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 7.38.4 Such notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **7.39. REPRESENTATIVES OF THE PARTIES:**

#### **City's Representatives**

The City designates the individual listed below as the City's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes:

Eric J. Froberg, PE, City Engineer  
200 W. Washington Street, 5<sup>th</sup> Floor  
Phoenix, AZ 85003

The City will designate an individual as the City's Representative. This person will manage the Project.

### **Consultant's Representatives**

The Consultant designates the individual listed below as the Consultant's Senior Representative. This person has the authority and responsibility for avoiding and resolving disputes:

Name, Title  
Firm Name  
Address  
City, Arizona 85XXX

The Consultant will designate an individual as the Consultant's Representative.

## **7.40. NOTICES:**

### **General Notices**

Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (1) confirmed delivery by hand or standard overnight mail or (2) upon the expiration of three business days after the day mailed by certified mail, to the Representatives identified above, or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

**IN WITNESS WHEREOF**, City and Consultant have entered into this Agreement which is operative on the Effective Date.

**CITY OF PHOENIX**,  
an Arizona municipal corporation  
Jeffrey Barton, City Manager

**FIRM NAME**,  
a/an State [Enter Business Type]

By: \_\_\_\_\_  
Eric J. Froberg, PE, City Engineer

By: \_\_\_\_\_  
Name of Signatory, Title

ATTEST:

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

APPROVED AS TO FORM,  
CRIS MEYER, City Attorney

By: \_\_\_\_\_

## EXHIBIT A

### **INSURANCE AND INDEMNIFICATION REQUIREMENTS**

#### **1. DEFENSE AND INDEMNIFICATION CLAUSE:**

To the maximum extent allowed by law, including Title 34 A.R.S., Consultant (“Indemnitor”) must defend, indemnify, and hold harmless the City and its officers, officials (elected or appointed), agents and employees (“Indemnitee”) from any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subconsultants (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s workers’ compensation law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

#### **2. CONSULTANT’S INSURANCE:**

Consultant and subconsultants must procure insurance against claims that may arise from or relate to performance of the work hereunder by Consultant and its agents, representatives, employees and subconsultants. Consultant and subconsultants must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees, or subconsultants and Consultant may purchase such additional insurance as they determined necessary.

##### **2.1. SCOPE AND LIMITS OF INSURANCE - Consultant must provide coverage with**

limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

### **2.1.1. Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage, broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Consultant related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- The Consultant’s insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

### **2.1.2. Automobile Liability**

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- The Consultant’s insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.



### 2.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability:	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a Consultant or subconsultant is exempt under A.R.S. 23-902(E), **AND** when such Consultant or subconsultant executes the appropriate sole proprietor waiver form.

### 2.1.4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- Consultant warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two years beginning at the time work under this Contract is completed.

### 2.1.5. Professional Liability (Errors and Omissions Liability) for Subconsultants

(Projects with an estimated construction cost of \$5 million or greater.)

In addition to the insurance requirements for the Consultant, the Consultant's registered subconsultants (including structural, civil, mechanical, plumbing, electrical engineering, landscape architecture, survey, geotechnical and materials testing) are required to carry Professional Liability insurance as follows:

- Estimated Project Construction Cost of \$5,000,000 to \$25,000,000

Each registered subconsultant will carry:

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- Estimated Project Construction Cost of over \$25,000,000

Structural, civil, mechanical, plumbing, electrical engineers will carry:  
Each Claim \$2,000,000



Annual Aggregate \$2,000,000

- Estimated Project Construction Cost of over \$25,000,000

All other registered subconsultants not listed above will carry:

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

**2.2. NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Agreement, the Consultant must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **Design and Construction Procurement, 200 W. Washington Street, 5<sup>th</sup> Floor, Phoenix, AZ 85003.**

**2.3. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

**2.4. VERIFICATION OF COVERAGE:** Consultant must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.

All certificates required by this Agreement must be sent directly to Design and Construction Procurement via email at **str.title34.procure@phoenix.gov**. **The City project number, contract number and project description must be noted on the certificate of insurance.** The City reserves the right to review complete copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

**2.5. SUBCONSULTANTS:** Consultant’s certificates shall include all subconsultants as additional insureds under its policies **OR** Consultant shall be responsible for ensuring and verifying that all subconsultants have valid and collectable insurance. At any time throughout the life of the agreement, the City of Phoenix reserves the right to require proof from the Consultant that its subconsultants have insurance coverage. All subconsultants providing services included under this

Agreement's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Consultant may, on behalf of its subconsultants, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Consultant assumes liability for all subconsultants with respect to this Agreement.

**2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Agreement must be documented by an executed contract amendment.

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## EXHIBIT B

### **1. BACKGROUND SCREENING:**

Consultant agrees that all Consultant and subconsultants' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Consultant's sole cost and expense, unless otherwise provided for in the scope of work. Consultant's background screening will comply with all applicable laws, rules and regulations. Consultant further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

- 1.1 **Background Screening Risk Level:** The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Consultant to incur additional contract costs to obtain background screens or badges.
- 1.2 **Terms of This Section Applicable to all Consultant's Contracts and Subcontracts:** Consultant will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.
- 1.3 **Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Consultant will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Consultant. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Consultant from any liabilities that may arise out of the Consultant's services under this Agreement or Consultant's failure to comply with this section. Therefore, Consultant and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.
- 1.4 **Continuing Duty; Audit:** Consultant's obligations and requirements will continue throughout the entire term of this Agreement. Consultant will maintain all records and documents related to all background screenings and the City reserves the right to audit Consultant's records.
- 1.5 **Consultant's Default; Liquidated Damages; Reservation of Remedies for Material Breach:** If Consultant is required to access any City facilities without

an escort, City badging is required. Consultant's default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Consultant submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Consultant fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Consultant acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Consultant agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Consultant's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Consultant will be liable for and pay to the City the sum of \$1,000.00 for each breach by Consultant in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Consultant breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Consultant breaches this section. The parties further agree that three breaches by Consultant in this section arising out of any default within a consecutive period of three months or three breaches by Consultant in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Consultant and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

- 1.6 Employee Identification and Access:** Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work

area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must **always** have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Consultant will supply a list of the names and titles of all employees requiring access to the buildings. It is the Consultant's responsibility to provide updates and changes of personnel as necessary.

1.7 **Key Access Procedures:** If the Contract Worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Consultant for each key issued. Consultant must submit the completed key issue/return form to the appropriate badging office.

1.8 **Stolen or Lost Badges or Keys:** Consultant must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

1.9 **Return of Badge or Key:** All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Consultant will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

1.10 **Badge and Key Fees:** The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon a 30-day prior written notice to Consultant.

Replacement Badge Fee:	\$55.00	per badge
Lost/Stolen Badge Fee:	\$55.00	per badge
Replacement Key Fee:	\$55.00	per key
Replacement Locks:	\$55.00	per lock

## 2. **BACKGROUND SCREENING – STANDARD RISK:**

2.1 **STANDARD RISK LEVEL** background screening will be performed when the Contract Worker's work assignment will:

- require a badge or key for access to City facilities; or

- allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- allow unescorted access to City facilities during normal and non-business hours.

2.2 **Requirements:** The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.

2.2 **Consultant Certification; City Approval of Background Screening:** Unless otherwise provided for in the Scope, Consultant will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
- for reviewing the results of the background check every five years; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department.
- For sole proprietors, the Consultant must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Consultant certifies and warrants that Consultant has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Consultant further certifies and warrants that Consultant has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

### **3. BACKGROUND SCREENING – MAXIMUM RISK:**

3.1 **Maximum Risk Level:** A maximum risk background screening will be performed every five years when the Contract Worker's work assignment will:

- work directly with vulnerable adults or children, (under age 18); or
- any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- unescorted access to:
  - City data centers, money rooms, high-value equipment rooms; or
  - unescorted access to private residences; or
  - access to critical infrastructure sites/facilities; or



- direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

3.2 **Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

3.3 **Additional Maximum Risk Background Checks:** Maximum screening will additionally require:

- Credit Check (for cash handling, accounting, and compliance positions only)
- Driving records (for driving positions only)
- Fingerprint verification (when Contract Worker is working directly with children or vulnerable adults or scope takes the individual to a City location with Criminal Justice Information System (CJIS) access.)

3.4 **Maximum Risk Background Criminal Justice Information Services (CJIS) Check Must Include:**

- Criminal records - Conviction of a misdemeanor(s) (not including traffic or parking violation) or felony(ies).
- Sexual offender search
- All outstanding warrants
- Currently the focus of a criminal investigation
- Currently on parole or probation

3.5 **Consultant Certification; City Approval of Maximum Risk Background Screening:** Unless otherwise provided for in the Scope of Work, Consultant will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- submitting pass/fail results to the City for approval; and,
- reviewing the results of the background check every three to five years, dependent on scope; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department; and,
- If, upon review of the background information, the City will advise the Consultant if it believes a Contract Worker should be disqualified. The Consultant will evaluate the Contract Worker and if the Consultant believes that there are extenuating circumstances that suggest that the person

should not be disqualified, the Consultant will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.

- For sole proprietors, the Consultant must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Consultant certifies and warrants that Consultant has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Consultant, or any contracted agency that assists with review, after the City’s completed review.
- By executing this agreement, Consultant further certifies and warrants that Consultant has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Consultant has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Consultant for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- For any childcare or health worker positions, or Criminal Justice Information Systems access in the scope of work, Consultant is required to send the City updated background checks *every three years*.
- The Consultant will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Consultant is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Consultant grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.

The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social



security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the appropriate department at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the appropriate department. A designated department representative will conduct the security check.

The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:

- Conviction of a felony.
- Conviction of a misdemeanor (not including traffic or parking violation).
- Any outstanding warrants (including traffic and parking violations).
- A person currently on parole or probation.
- A person currently involved in an investigation.

**4. CJIS SECURITY ADDENDUM:** This agreement incorporates by reference the requirements of the Criminal Justice Information Services (CJIS) Security Policy (current version 5.3, dated August 4, 2014), and as referenced in Title 28 CFR 20.33(a)(7), issued by the Federal Bureau of Investigation, Criminal Justice Information Services Division, as in force as of the date of this Agreement and as may, from time to time hereafter, be amended. Consultant warrants that it has the technological capability to handle Criminal Justice Information (CJI), as that term is defined by the FBI CJIS Security Policy, in the manner required by the CJIS Security Policy. Consultant expressly acknowledges that the CJIS Security Policy places restrictions and limitations on the access to, use of, and dissemination of CJI and hereby warrants that its system abides by those restrictions and limitations.

Private contractors are permitted access to criminal history record information systems pursuant to a specific agreement for the purpose of providing services for the administration of criminal justice pursuant to that agreement. Private contractors who perform the administration of criminal justice shall meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies. In accordance with the CJIS Security Addendum, a minimum of a background check (fingerprint) will be administered and required through the Arizona state and federal criminal justice system for all contracted employees who may have access to CJIS information. Background checks (fingerprints) will be performed and received with required clearance prior to receipt of any CJIS information.

**For project scopes NOT involving Personal Identifying Information or Procurement Card Information, or financial information, the following applies:**

**CONFIDENTIALITY AND DATA SECURITY:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as specifically provided in this Agreement, the Consultant shall not disclose data

generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Consultant agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.

Consultant agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

**For project scopes involving Personal Identifying Information or Procurement Card Information, or financial information, the following applies:**

**CONFIDENTIALITY AND DATA SECURITY:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Consultant shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Personal identifying information, financial account information, protected health information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. Consultant must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these

types of information cannot practicably be read or reconstructed. Consultant will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Consultant in connection with this Agreement is suspected to have been compromised, Consultant shall notify the contracting City department immediately. Consultant agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Consultant that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Consultant notify individuals affected by a breach or critical breach of the City's information.

Consultant agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Consultant that process, store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Consultant agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Consultant must remediate found vulnerabilities in computerized systems they provide; Consultant is **not** liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by the Consultant.

Consultant agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.

Consultant agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE) No. 16, or through earning industry certification, such as ISO/IEC 27001.

By signing and entering this Agreement the Consultant specifically acknowledges that it is responsible for the security of cardholder data that Consultant possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a

requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.

Consultant agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

Consultant agrees that the requirements of this Section shall be incorporated into all subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

- 5. SECURITY INQUIRIES:** Consultant acknowledges that all of the employees that it provides pursuant to this Contract shall, at Consultant's expense, be subject to background and security checks and screening at the request of the City. Consultant shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all the employees proposed by the Consultant for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Consultant for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Consultant to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Consultant's employees and/or prospective employees; and
- object, at any time and for any reason, to an employee of Consultant performing work (including supervision and oversight) under this Agreement. Consultant will bear the costs of all inquiries requested by the City.

**EXHIBIT C**

**TRAVEL REIMBURSEMENT PROCEDURE**

**(NOT USED)**

DRAFT

**EXHIBIT D**

**DEPARTMENT SPECIFIC REQUIREMENTS**

**[ IF SELF MANAGED, CHECK WITH PM FOR APPLICABLE INFORMATION TO ATTACH HERE ]**

DRAFT

**EXHIBIT E**  
**DBE REQUIREMENTS**  
**(ATTACHED)**

DRAFT

**EXHIBIT F**

**SUPPLEMENTAL TERMS AND CONDITIONS**

**(NOT USED)**

DRAFT



## **EXHIBIT G**

### **SCOPE OF SERVICES**

The City of Phoenix proposes to retain Consultants to provide field and laboratory Quality Assurance, Quality Control, Referee, and Independent Assurance Materials Testing Services for multiple light rail extensions.

The firm will be required to provide vehicles, fuel, all applicable code books, cellular phones, laptops/tablets, printer, paper, ink, pens, markers, digital camera, and other equipment deemed necessary to complete the tasks required per each staff member assigned to a project. Cell phones and laptop/tablet must have full field connectivity (Wi-Fi, Hotspot, etc). Firm is required to provide technical support for their equipment. All Materials Technicians are required to have equipment listed on the City of Phoenix Materials Lab Required Equipment checklist while on the project.

Scope of work may include, but is not limited to geotechnical investigations, geotechnical and materials testing; laboratory and field testing of soil, concrete, and asphalt; plant inspections; analyses and preparation of reports; and daily oversight to ensure compliance with City of Phoenix, Maricopa County and Valley Metro standards, policies, and guidelines.

Materials field testing will include roadway, alley, water, sewer, dry utilities, landscape and irrigation, irrigation facilities, storm drain, retentions, embankments, earthwork, trenching, grading, soil treatments, masonry, structural steel, bridge/structures, sidewalk, ADA ramps, curb & gutter, and driveways for compliance with standard details, specifications, and approved plans.

Team members will provide services to ensure projects are successfully executed within scope, schedule, and budget. These extensions of staff will act as a representative of the City of Phoenix by:

- Attending daily, weekly, monthly meetings
- Daily interaction with the contractor (may include irregular work hours)
- Preparation of daily, weekly, and monthly reports
- Data entry into Valley Metro's program management system (ACONEX)
- Reviewing and commenting on contractor's compliance with City of Phoenix's asset management requirements
- Coordination among/between other City Departments, City Staff, and other governmental agencies
- Other services as required to support successful completion of the work and City's interest

The positions require knowledge of construction practices, civil engineering techniques, and terminology and may require material testers to show proof of appropriate certifications: International Code Council (ICC), American Concrete Institute (ACI Field & Lab), Arizona Technical Testing Institute (ATTI Field & Lab), or NICET, OSHA Trench Safety and/or Mine Safety Health Administration (MSHA), American Traffic Safety Services Association (ATTSSA).

All consultants providing Laboratory Quality Assurance, Quality Control, Referee and/or Independent Assurance Materials Testing Services must be certified to perform the requested work through re:source (formerly Concrete & Cement Reference Laboratory (CCRL) and American Material Reference Laboratory (AMRL).

**ATTACHMENT 1**

**BILLABLE RATES**

**FIRM HOURLY BILLABLE RATE**

.....	\$
.....	\$
.....	\$
.....	\$
.....	\$
.....	\$
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.....	\$

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**ATTACHMENT 2**  
**INSURANCE CERTIFICATES**

**(ATTACHED)**

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