



City of Phoenix

REQUEST FOR QUALIFICATION
RFQu-LAW-23-0084
OUTSIDE COUNSEL SERVICES

City of Phoenix
Law Department
200 W. Washington St.
Floor 13
Phoenix, AZ
85003

RELEASE DATE: March 13, 2023

DEADLINE FOR QUESTIONS: March 24, 2023

RESPONSE DEADLINE: April 7, 2023, 4:00 pm

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Outside Counsel Services

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1. INTRODUCTION

1.1. Summary

The City Attorney of the City of Phoenix requests detailed information concerning the qualifications and hourly rates of attorneys or law firms willing to provide legal services as outside counsel to the City of Phoenix and affiliated entities.

The City Attorney intends to establish a list of qualified attorneys and law firms ("Counsel List") from which outside counsel will be selected to provide legal services on an as-needed, case-by-case or matter-by-matter basis through a Letter of Engagement ("LOE").

The Offer by the qualified attorney or law firm to furnish legal services at the rates provided in the Area of Law/Rates attachment must remain fixed for the entire term of the offer and acceptance period until accepted by the City Attorney. These rates will also remain fixed for the duration of any LOEs entered into during the two-year term until case or matter completion.

The City Attorney may enter into a two-year contract for legal services ("Agreement" with a qualifying attorney or law firm. The execution of an agreement does not guarantee that any case or matter, or any minimum number of cases or matters, will be assigned to any particular attorney or law firm.

After the execution of an Agreement, the City Attorney may assign a case or matter to an attorney or law firm through a LOE. The LOE will set forth the scope of retention, confirm the rates applicable to the specific matter, and may designate the specific attorney(s) to provide the services required. A sample LOE is attached hereto.

All documents and information involving this solicitation process are available from the following City of Phoenix website: <https://www.phoenix.gov/solicitations>

1.2. Background

It is intended that when an attorney or law firm is retained or referred a lawsuit or other legal matter by the City Attorney, the attorney or law firm will provide any necessary legal representation to the City and any of its officers, employees or agents acting within the scope of their employment. The attorney or law firm shall perform all necessary legal services in representing the City, including but not limited to investigation, legal research and preparation of legal memoranda, pleadings and briefs and making appearances before administrative tribunals, mediators, arbitrators and courts. These services shall be performed on an as-needed, case-by-case or matter-by-matter basis for the City of Phoenix Law Department and will be more fully defined in a resulting Letter of Engagement ("LOE").

Common practice areas for the legal services include, but are not limited to, those found in the Areas of Practice and Rate Schedule document, which is attached hereto.

1.3. Contact Information

Jessica Arambula
Administrative Assistant II
200 W. Washington St.
Floor 13

Phoenix, AZ 85003
Email: jessica.arambula@phoenix.gov
Phone: [\(602\) 495-3688](tel:(602)495-3688)

Department:
Law

1.4. Timeline

Schedule of Events

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a Pre-Offer Conference or Site Visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Jessica Arambula) at (602) 495-3688/Voice or 711/TTY, or jessica.arambula@phoenix.gov, no later than two (2) weeks prior to the meeting.

Solicitation Issue Date	March 13, 2023
Written Inquiries Due Date	March 24, 2023, 4:00pm
Offer Due Date	April 7, 2023, 4:00pm 200 W. Washington Street, 13th Floor, Phoenix, AZ 85003

2. INSTRUCTIONS

2.1. Description – Statement of Need

The City of Phoenix invites sealed offers for legal professional services for a two-year contract commencing on or about July 1, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

2.2. City’s Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

2.3. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.
- C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
- D. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this

solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

2.4. Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

2.5. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested offerors without internet access may obtain this solicitation by contacting the Procurement Officer and arranging a time to or pick up a copy during regular business hours. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

2.6. Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Offer.

2.7. Inquiries

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after City Council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

2.8. Addenda

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

2.9. Licenses

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

2.10. Certifications

By signature in the Offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the Offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

2.11. Submission of Offer

Offers must be in possession of the Law Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department's clock.

Offers must be submitted in one of the following ways:

- A. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:
 1. Offeror's Name
 2. Offeror's Address (as shown on the Certification Page)
 3. Solicitation Number
 4. Solicitation Title
 5. Such offers must be completed in ink or typewritten.
- B. Submitted electronically by email to jessica.arambula@phoenix.gov and the following information should be noted in the email:
 1. Offeror's Name
 2. Offeror's Address (as shown on the Certification Page)
 3. Solicitation Number
 4. Solicitation Title
 5. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails, which must be numbered sequentially. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.

2.12. Withdrawal of Offer

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

2.13. Offer Results

Offers will be opened on the offer due date. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

Once the City has evaluated the Offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

2.14. Special Requirements

In order for the solicitation response to be considered, the Offeror shall comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Any questions in regard to these requirements shall be directed to the Equal Opportunity Department, (602) 262-6790.

2.15. Qualification Criteria

Each Offeror must be authorized to practice law and be in good standing in the state in which the Offeror is authorized to practice law. While the City Attorney accepts offers from attorneys admitted to jurisdictions outside of Arizona, the City Attorney anticipates most of the legal services involve matters located within Arizona.

Each Offeror must demonstrate in its Offer that it meets the minimum qualifications or its Offer will be disqualified as non-responsive.

If the minimum qualifications are met, and the Offer is otherwise complete and compliant with the solicitation requirements, Offerors will be awarded an Agreement through the City's acceptance of the Offer (memorialized by the City's execution of the Acceptance of Offer form, which is attached hereto) and placed on the City's Counsel List. However, there is no guarantee of assignments by being placed on the list or awarded an Agreement. Assignments for legal counsel are subject to the sole discretion of the City Attorney based on experience, needs of the City, or any other requirements applicable to specific matters or cases.

2.16. Commitment to Diversity

The City of Phoenix is an ethnically and culturally diverse community. The City emphasizes "Respect for Diversity" as one of its "Shared Values" and embraces diversity to create a healthy and productive community and workplace. The City of Phoenix Law Department continuously

works toward achieving quality service delivery through teamwork and diversity. Accordingly, the City is committed to placing outsourced legal work with outside counsel that shares the City's dedication to diversity and expects outside counsel to make a good faith effort to engage in practices and programs that reflect the City's shared value of respect for diversity.

2.17. Evaluation and Selection

Offers will be reviewed by City staff for responsiveness and documentation of minimum qualifications, completeness, and adherence to the solicitation requirements. The City reserves the sole right to determine the sufficiency of qualifications and experience of all Offerors.

2.18. Agreement

The language contained in this solicitation and the Offeror's statement of qualifications will form the basis of the resulting Agreements between the City and awarded Offerors. However, this solicitation does not commit the City to enter any contract, to pay any costs incurred in the preparation of a submittal to this request or in subsequent negotiations, or to procure a contract for the project(s).

The City Attorney anticipates the need for many non-exclusive agreements, but the exact number is unknown. The term of the Agreement will be two (2) years.

Offerors must read the terms and conditions herein, including attachments and submittals. These terms and conditions will not be negotiated after the solicitation closes. These terms and conditions may be amended at the sole discretion of the City at any time during the solicitation process and prior to execution.

Offerors are responsible for reading all materials herein, including terms and conditions, and submitting any questions in accordance with the solicitation process. By submitting a response, each Offeror agrees it will be bound by the Agreement, and such Agreement will be fully executed upon the City's execution of the Acceptance of Offer form and filing the Agreement with the City Clerk. Offerors must be specific about the areas of law that they are offering and clearly designate those areas in their response.

2.19. Solicitation Transparency Policy

Commencing on the date and time a solicitation is issued, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the designated Procurement Officer. Potential and actual Offerors may not discuss this solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) unless the occurs at a public meeting, posted under Arizona Statutes. This Transparency Policy shall be in place until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without an accompanying announcement of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

Offerors may not discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, unless such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

2.20. Protest Process

Offeror may protest the contents of a solicitation no later than seven days before the Offer Due Date when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.

Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.

All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

- Identification of the solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

2.21. Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

2.22. Late Offers

Late Offers must be rejected, except for good cause as defined in Section 43-8 of the Phoenix City Code. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.

2.23. Right to Disqualify

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

2.24. Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

2.25. Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of any required minimum qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

2.26. Form of Offer

The Offer shall conform to the following format. Offers that are incomplete; conditional; obscure; or that contain additions not requested, changes or exceptions to material provisions or requirements of this solicitation; or irregularities of any kind, are subject to disqualification as non-responsive.

Each Offer must include all of the following in the following order:

- Document 1 - a Letter of Transmittal as the first page(s) of the Offer including the following:
 - Statement indicating the submission of a formal Offer to "Outside Counsel Services, RFQu-LAW-23-0084".
 - General description of areas of specialization - please be specific about areas of law that your firm practices and is offering.

- Document 2 - a "conflicts letter" setting forth either (a) the nature of any representation currently adverse to the City of Phoenix or (b) a representation that there is no such legal activity adverse to the City or its interests.
- Document 3 - identification of the areas of legal services and applicable rates being offered by completing the Areas of Practice Rate Schedule form (attached hereto).
- Document 4 - a Certificate of Insurance providing coverage as described in the Insurance Requirements section(s) hererin. The failure to provide a Certificate of Insurance in conformity with insurance requirements will not disqualify the Offeror from being placed on the Counsel List of qualified attorneys and law firms but will be required prior to any work being assigned to any attorney or law firm. Any alternative insurance requirements must be approved by the City Attorney in their sole discretion.
- Document 5 - general background information with respect to the firm and attorneys/Individuals with special focus on the area of activity offered. The Offeror should indicate:
 - the size and experience of the firm;
 - the type of firm organization (e.g., partnership, professional corporation);
 - the overall areas of practice of the firm, including alternative dispute resolution services; and
 - specific information with respect to each area of specialization:
 - background and experience in providing work for that specific area of law, including experience representing government entities;
 - description of ability and capacity to meet the City's needs in a timely manner;
 - description of staffing levels available to provide the required legal services;
 - the names of the attorneys/individuals who will be assigned to provide legal services for that specific area of law;
 - the number of years they have been practicing in that area of law;
 - their position in the firm hierarchy for billing purposes (e.g., senior partner, junior partner, senior associate, junior associate);
 - their specialist certification (if any); and
 - references from current or former clients.
 - specific information evidencing the firm's commitment to diversity, which may include policies and procedures; existing initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training; and memberships or participation in diverse organizations.

- Document 6 - the Business Certification and Information form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 7 - the Affidavit form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 8 - the Solicitation Conflict and Transparency Disclosure form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 9 - the Offer Page (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).

2.27. Fixed Rates Through Offer and Acceptance Period and Agreement

Once an Offeror has been placed on the Counsel List, the Offeror must maintain the hourly rates submitted by the Offeror and shall not increase the hourly rates set forth in the Offer for the particular billing designation and specialty. The hourly rates in an Offer must remain fixed through the solicitation's offer and acceptance period and throughout the two-year term of the Agreement, including amendments thereto or LOEs. The hourly rates submitted as part of any Offer shall be prospective for matters going forward and governed by the Agreement and shall not be retroactively applied to past or present engagements with the City.

2.28. City's Reservation of Rights

The City reserves the right to take any course of action deemed appropriate by the City in its sole and absolute discretion, which may include the following:

- Waiving any defects or informalities in any offer or proposal procedure;
- Accepting or rejecting any or all Offers or any part of any or all Offers;
- Canceling the solicitation in part or in its entirety;
- Reissuing the solicitation with or without modification;
- Negotiating with any qualified Offeror;
- Extending the deadline for Offers; and/or
- Requesting additional information from any or all Offerors.

2.29. Offeror Certification and Affidavit

By submitting an Offer, each Offeror certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a contract to any employee, official or current contractor of the City. Any Offeror unable to comply with any required certifications may be disqualified.

In compliance with A.R.S. Sections 1-501 and 1-502, the City shall require any successful Offeror that submits its Offer as a sole proprietorship or as an individual to complete the Affidavit of Lawful Presence prior to the award of any contract resulting from this process.

2.30. Covenant Against Contingent Fees Paid to Offeror

By submitting an Offer, the Offeror certifies it has not employed or retained any person or company, other than a member of its proposed team or a bona fide employee working solely for the Offeror, to solicit or secure a contract resulting from this solicitation and that no agreement has been made to pay the Offeror or any member of its team any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or execution of such contract. For breach or violation of this certification, the City shall have the right to annul any contract entered into with an Offeror as a result of this solicitation without liability, or in its discretion to deduct the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2.31. No Gratuities

Offerors shall not offer any gratuities, favors or anything of monetary value to any official or employee of the City or its advisors for the purposes of influencing this solicitation. Any attempt to influence the solicitation process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

3. SCOPE OF WORK

3.1. Agreement

The resulting Agreement will be made and entered on the 1st day of July, 2023, by and between the City of Phoenix (hereinafter "CITY"), acting by and through the Phoenix City Attorney, for and on behalf of the CITY and on behalf of certain separate legal entities affiliated with or financially supported by the CITY (individually referred to as "CLIENT" and collectively referred to as "CLIENT ENTITIES") and Offeror (hereinafter "COUNSEL" or "CONTRACTOR").

For COUNSEL that provide legal services related to Collections for the CITY, the Collections Scope, attached hereto, will take precedence.

For COUNSEL that provide legal services in connection with HOPE VI and other HUD Funded projects, the provisions of HUD Forms 5369-C and 5370-C, attached hereto, will be incorporated into any resulting LOEs by this reference.

3.2. Term of Agreement

The resulting Agreement is effective beginning July 1, 2023, and expiring on June 30, 2025.

Upon expiration of the Agreement and conclusion of matters subject to open Letters of Engagement, COUNSEL must cease all work under the Agreement in a fashion consistent with COUNSEL's ethical obligations to protect the interests of the CITY and CLIENT. COUNSEL will submit a final bill and status report on each matter then being handled by COUNSEL. And COUNSEL will return the matter and all related files to the CITY and CLIENT.

3.3. Scope

The CITY and COUNSEL agree that COUNSEL may furnish legal services to the CITY, or to one or more CLIENT ENTITIES, on the terms and conditions established by the Agreement, including this Scope of Work, and subject to the additional requirements set forth in a Letter of Engagement ("LOE") issued at the time a matter is referred to COUNSEL.

If a lawsuit or other legal matter is referred by the City Attorney, COUNSEL will provide any necessary legal representation to the CITY or to the CLIENT and any of its officers, employees or agents as directed by the CITY. COUNSEL will perform all necessary legal services, including but not limited to investigation, legal research, preparation of legal memoranda, pleadings and briefs, drafting and review of legal documents, providing legal advice and opinions, conducting discovery and making appearances before administrative tribunals and courts and, when necessary, try cases, (hereinafter "legal services") in representing CLIENT. The legal services must be carried out under the supervision of the City Attorney, in a manner consistent with Counsel's ethical obligations to the CITY and the CLIENT.

COUNSEL must not undertake any representation of the CITY and CLIENT or perform any legal services for the CITY and CLIENT at the request of any CITY and

CLIENT official or employee without first obtaining specific written authorization to do so from the City Attorney or their designee.

COUNSEL will not file any action or enter any litigation on behalf of the CITY and CLIENT without first obtaining permission to do so from the City Attorney or their designee.

Before releasing any written legal opinion or statement affecting the CITY or CLIENT or any of their officers or employees, COUNSEL must obtain the City Attorney's concurrence.

3.4. Referral of Work to Legal Counsel

Referral of legal matters to COUNSEL under this Agreement will only be through the City Attorney or their designee.

Work performed by COUNSEL on matters that are not referred to COUNSEL as set forth in this Agreement will be considered unauthorized and non-compensable. COUNSEL will provide legal services to the CITY and CLIENT only through the City Attorney, and not independently of the City Attorney. COUNSEL will report to the City Attorney any effort made to engage the services of COUNSEL independently of the City Attorney's Office.

Referral of legal matters to COUNSEL will be through a Letter of Engagement ("LOE") signed by the City Attorney or their designee and addressed to a specific attorney in COUNSEL'S FIRM. This attorney shall be the lead attorney and be expected to try the legal matter if necessary. The LOE will contain: (1) the name and a description of the matter for which legal services are sought, (2) an explanation of the scope of work, (3) the compensation the CITY and CLIENT will pay COUNSEL for the services sought, and if CLIENT or another entity— but not the CITY— will be responsible for payment of COUNSEL's fees, describing the payment arrangements and responsibilities, (4) a designated Contact Attorney in the City Attorney's Office, and (5) as appropriate, the identification of the specific Client Representative(s) with whom COUNSEL will communicate and from whom COUNSEL will receive direction. The Letter of Engagement is not effective unless it is signed by the City Attorney, the Chief Assistant City Attorney, or Chief Counsel.

The LOE is effective upon receipt. Each LOE will identify a specific Contact Attorney from the Office of the City Attorney with whom COUNSEL will be working and to whom COUNSEL will be reporting. In the event that COUNSEL needs to communicate with someone other than the Contact Attorney, COUNSEL will contact the City Attorney, Chief Assistant City Attorney, or the Chief Counsel, Civil Division.

In situations where the CLIENT is not the CITY, COUNSEL acknowledges that the entity responsible for payment will be specified in the LOE, and may be an entity other than the CITY. COUNSEL will not accept compensation from the CITY for representing CLIENT unless: (1) CLIENT gives informed consent; (2) there is no interference with COUNSEL's independence of professional judgment or with the client-lawyer relationship; and (3) confidential information relating to COUNSEL's representation of CLIENT is protected. Rule 42, RPC E.R. 1.8 (f) and 1.6, Az.R.Sup.Ct.

3.5. Client Contact

All decisions requiring the consent of CLIENT will be brought by COUNSEL to the attention of the Client Representative and the Contact Attorney, as appropriate and as referenced above.

3.6. Staffing

CITY and CLIENT reserve the right to designate one or more specific attorneys in COUNSEL'S firm to work on specific matters. COUNSEL will employ suitably trained and skilled professional personnel to perform the legal services. Prior to changing any key personnel, especially those

key personnel who the CITY relied upon in making this Agreement, COUNSEL must obtain the approval of the Contact Attorney. All staffing decisions must be discussed and agreed upon with the CITY and, if applicable, with CLIENT in advance. The key personnel who the CITY relied upon in making this Agreement shall try the legal matter, if necessary.

3.7. Materials and Investigative Services

CITY and CLIENT will furnish COUNSEL all investigative and other materials the CITY and CLIENT has relative to the legal services to be provided by COUNSEL and will conduct such additional investigation as COUNSEL may request.

3.8. Compensation

COUNSEL will be paid for services under this Agreement as set forth in the "Compensation" Attachment.

- A. Hourly Rate - If compensated on an hourly rate, Contractor will be paid at an hourly rate that includes all costs and expenses except for those specific reimbursable expenses listed the "Reimbursable Expenses" Attachment. The monthly payment of billed hourly fees must be reduced by 2% if COUNSEL is paid within 10 days of receipt of Contractor's invoice.
- B. General Contingency - If COUNSEL is compensated on a contingency basis, for other than Collections, COUNSEL will be paid an amount equal to the agreed upon contingency percentage multiplied against the return, plus all costs and expenses listed in the "Reimbursable Expenses" Attachment.
- C. Compensation for Arbitration Cases - For cases billed on an hourly basis and deemed to be under A.R.S. Section 12-133, COUNSEL will be paid a single lump sum as set forth in the "Compensation" Attachment. The lump sum includes all fees, costs, and expenses except for those specific reimbursable expenses listed in the "Reimbursable Expenses" Attachment. The lump sum amount will apply for the term of this Agreement and will not be renegotiated during the term of this Agreement, except that COUNSEL will have the ability under this Agreement to request the CITY and CLIENT to change the compensation designation to an Hourly Rate, as described above, when unforeseen developments make continued billing under this paragraph unfair or unreasonable. The CITY and CLIENT will not unreasonably deny such a request from COUNSEL.

3.9. Reimbursement for Expenses

COUNSEL will be reimbursed for approved expenditures where the expense is itemized in the invoice and COUNSEL provides the documentation supporting the invoiced amount.

All expenses must be billed at COUNSEL's actual out-of-pocket cost without any mark-up.

3.10. Accounting and Auditing

The CITY, the CLIENT, and their duly authorized representatives may access and examine all books, documents, papers, records, and other evidence reflecting all time charges, compensation and costs billed under this Agreement. These materials must be made available

at the office of COUNSEL at any reasonable time for inspection, audit, or reproduction until the expiration of five (5) years from the date of final payment under this AGREEMENT.

COUNSEL is prohibited from transmitting, or assisting in the transmission of, any billing information generated by COUNSEL under this Agreement to any person or organization other than the CITY and CLIENT without the express written consent of the City Attorney.

3.11. Hourly Billing - Paper Invoices

COUNSEL will prepare invoices for services rendered and expenses incurred during the prior month on each matter handled. COUNSEL should submit monthly invoices on or before the 15th day of every month to get paid for that month; the CITY will not rush payments on late billings. The CITY tracks fees and expenditures by matter, and expects to receive a separate invoice for each matter billed. All billing will be in accordance with ABA Opinion No. 93-379.

If sent electronically, the monthly invoices should be submitted to:

Mailbox Display Name: LAW Civil Invoices

Email Address: law.civil.invoices@phoenix.gov

If mailed, the monthly invoices should be addressed to:

ATTN: Outside Counsel Invoice Processor

Office of the City Attorney

200 West Washington Street, 13th Floor

Phoenix, Arizona 85003-1611

Each matter should be covered in a separate invoice in an easily understandable format. Each invoice should contain the following information: (1) this Agreement No; (2) for liability defense cases, the Risk Management claim number, and for other matters, the department, project number, and project name; (3) the bill and invoice date; (4) the Matter Identification Number assigned to the matter; (5) the date and time of each activity billed; (6) the initials of the individual performing the activity; (7) the corresponding ABA task codes, (8) for each activity, a specific description of the work done sufficient to ascertain the work involved being mindful of the potential limitations under E.R. 1.8 in situations where CLIENT is not the CITY; and (9) a separate itemization of reimbursable disbursements and expenditures, including the corresponding ABA expense code for the expense, along with the supporting documentation.

Along with each paper invoice COUNSEL must also provide a separate Invoice Summary Page in the form and containing the information exhibited by the "Sample Invoice Summary Page" Attachment.

3.12. Hourly Billing - Electronic Invoices

If requested by the CITY or CLIENT, COUNSEL must become, at COUNSEL's sole expense, a subscriber to Acuity Management Solutions© (<http://www.acuityelm.com>) hereinafter "Acuity" and comply with Acuity's directions concerning the submission, review, and approval of monthly electronic invoices. COUNSEL will submit invoices electronically following the basic LEDES

(Legal Electronic Data Exchange Standard) format as directed by Acuity, being mindful of the potential limitations under E.R. 1.8 in situations where CLIENT is not the CITY.

COUNSEL will contact Acuity directly concerning the costs associated with such a subscription and to arrange the necessary training.

If invoices are submitted electronically, then for purposes of calculating the CITY's and CLIENT's entitlement to the 2% discount referenced above, the date COUNSEL's invoice is received by the CITY and CLIENT will be the date when the invoice status is changed by COUNSEL to "For Approval." If invoices are not submitted electronically, then the invoice will be deemed to be received on the date the invoice is delivered by mail. Similarly, the date COUNSEL is paid by the CITY and CLIENT will be the date the payment is mailed to COUNSEL by the CITY and CLIENT.

3.13. Hourly Billing Restrictions

Unless otherwise agreed to by the Contract Attorney:

- Only one billing professional may bill to attend meetings, depositions, and arguments.
- COUNSEL is not to bill for more than 10 hours of any professional's time in any one day; requests for more time must be made and approval by the City documented and attached to invoice.
 - Adjustments will be considered for days spent in trial or when handling time sensitive matters with compressed deadlines, such as requests for preliminary injunction or temporary restraining orders. COUNSEL must receive prior approval from the Contact Attorney.
- COUNSEL is not to bill for more than 12 hours of research on any one matter; requests for more time must be made and approval by the City must be documented and attached to the invoice.
- Internal conferences are billable only by one of the attorney or firm participants.
- COUNSEL will not bill for more than two hours of travel time without Contact Attorney's prior approval.
- COUNSEL is not to bill the CITY in increments of less than six minutes (one hour).
- COUNSEL will be paid only for productive time that advances the interest of CLIENT.
- COUNSEL is not to bill for clerical time or other overhead expenses.

3.14. Restrictions on Reimbursements

Unless otherwise agreed to by the Contact Attorney:

- Reimbursement for expenses is limited to those specific reimbursable expenses listed in the "Reimbursable Expenses" Attachment.

- COUNSEL will not be reimbursed for any single expense greater than ONE THOUSAND DOLLARS (\$1,000).
- Travel expenditures of COUNSEL within Maricopa County will not be reimbursed. Mileage and parking will not be reimbursed.
- Airfare will be reimbursed at coach fare rates. Hotel accommodations will be reimbursed at commercial rates for non-resort facilities.
- Experts or consultants will be retained by COUNSEL on behalf of the CITY or CLIENT only after consultation with and approval by the Contact Attorney. COUNSEL is expected to pay the consultant for services provided and then submit an invoice for reimbursement.
- All experts and consultants must submit each bill like the format for outside counsel. The format includes itemized time, services, and expenses entries with all supporting documentation attached.
- No contract or subcontract will be made by COUNSEL with any other person to furnish any work or services under this Agreement without advance approval of the Contact Attorney.

3.15. Final Payment

The CITY will make final payment for all services performed and accepted within 60 days after COUNSEL has delivered to the CITY any final progress reports, documentation, materials, and evidence of costs and disbursement as required under this Agreement.

3.16. Conflict of Interest

COUNSEL is retained by the CITY to represent the CITY and CLIENT only for the purposes and to the extent set forth in this Agreement and the LOE. COUNSEL will be free to dispose of such portion of COUNSEL'S entire time, energy, and skill as are not required to be devoted to the CITY and CLIENT in such a manner as COUNSEL sees fit and to such persons, firms or corporations as COUNSEL deems advisable. But COUNSEL must not engage in any representation of any nature, including legislative or administrative lobbying, which could appear or be adverse to the CLIENT or the CITY. If any representation presents an ethical conflict of interest, and if a waiver is permitted pursuant to the AZ Rules of Professional Conduct, a waiver of the conflict must first be obtained from the CIT before COUNSEL undertakes the representation. COUNSEL agrees to have established policies and procedures to avoid conflicts of interest and to protect the attorney-client privilege. COUNSEL will immediately bring all situations involving adverse representation, and all conflicts and potential conflicts, to the attention of the CLIENT, the CITY, and the City Attorney. These include situations that may be subject to the Rules of Professional Conduct and circumstances where COUNSEL would otherwise be expected to identify the CLIENT or the CITY as a party, a potential party, or a non-party at fault. COUNSEL hereby represents and warrants that there is no known conflict of interest existing between a client or potential client of COUNSEL and the CLIENT or the CITY as a result of this Agreement. Before COUNSEL may undertake to represent parties in matters that may arise after execution of this Agreement, which may present issues adverse to the

CLIENT or the CITY, COUNSEL must present the circumstances of the matter to the CLIENT and the CITY and request a waiver of any ethical conflict of interest. Any conflict of interest that may arise as a result of COUNSEL'S representation of parties adverse to the CLIENT or the CITY will not be waived unless expressly stated in writing by the CLIENT and the CITY after full disclosure of the nature and extent of the conflict.

3.17. Copies of Documents

Throughout the course of the representation COUNSEL will timely furnish the Contact Attorney copies of all significant pleadings, discovery material, investigative, expert witness, transactional documents and other reports and correspondence (other than routine transmittal letters). All significant depositions and answers to interrogatories will be summarized promptly and furnished to the Contact Attorney. COUNSEL may also be asked to furnish such copies to CLIENT and the involved City Department(s) and insurance carrier(s). At the conclusion of COUNSEL's representation on any matter, COUNSEL will return the complete file to the CITY but may retain copies at COUNSEL's expense.

3.18. Budgeting

COUNSEL may be asked by the CITY and CLIENT to submit a budget and strategic plan. The plan must include a description of the available options for handling the matter, the major steps likely to be involved, the timing and sequence of the major steps, the projected costs (within a narrow range) associated with each step and the likelihood of prevailing in percentages.

If COUNSEL has subscribed to Acuity, COUNSEL will submit budget and exposure information as directed by Acuity.

3.19. Status Reports and Assessment of Exposure

COUNSEL must keep CLIENT and the CITY fully and currently informed about the status of all matters and the import of that status. As soon as practical after receipt of any referral, and in civil cases governed by Rule 26.1, Arizona Rules of Civil Procedure, as soon as disclosure statements are exchanged, COUNSEL will evaluate in writing the merits of the disputed matter and COUNSEL'S assessment of the monetary exposure or potential recovery, if any, to the CLIENT and the CITY. COUNSEL will also make appropriate recommendations. COUNSEL will furnish subsequent monthly or quarterly status reports as directed by the Contact Attorney. Status reports should be addressed to the Client Representative and Contact Attorney and should briefly outline the status of the case or matter, emphasize significant developments, summarize depositions and discovery, and address settlement proposals. COUNSEL must promptly notify the CLIENT and the CITY of events significantly affecting exposure and recovery.

COUNSEL will e-mail status reports and attach any important documents as .pdf images. A status report should precede any scheduled meeting where a comprehensive analysis of the case or matter is expected.

Any significant document that is not routine, or that is to be provided to third parties, including the court or administrative agencies, will be sent to the CLIENT and the CITY with enough time so that CLIENT and the CITY may have a meaningful review of it prior to distribution. All final copies of documents and memoranda for which the CITY is charged must be sent to the CITY.

3.20. Offers of Compromise

COUNSEL must consider the possibility of resolving disputes through both traditional and nontraditional methods of alternative dispute resolution.

All offers of compromise must be promptly transmitted to the CLIENT and the CITY through the Client Representative and Contact Attorney together with COUNSEL'S recommendations. The CITY and CLIENT will be responsible for obtaining proper authority to accept a compromise or make a counteroffer. COUNSEL may be required to attend meetings to adequately explain the status of a matter before a regulatory body or in litigation.

3.21. Notice

Any notice, consent, or other communication ("Notice") required or permitted under this Agreement will be in writing and either delivered in person, sent by e-mail or facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed to the Client Representative or Contact Attorney as appropriate.

3.22. Email Communication

CITY expects COUNSEL to provide a specific e-mail address accessible from or through the Internet that will allow direct communication between CITY and CLIENT and the attorney assigned to provide legal services for a particular matter.

3.23. Withdrawal of Counsel

COUNSEL must request to withdraw from representation of the CLIENT or the CITY, or any department, officer, agent or employee thereof, when it would be ethically improper to continue the representation. If COUNSEL requests to withdraw, the request must be in writing to the City Attorney setting forth in detail the reasons COUNSEL must withdraw.

3.24. Special Counsel Designation

It is expressly understood and agreed that COUNSEL is appointed as SPECIAL COUNSEL to the City Attorney for the purposes of carrying out the provisions of this Agreement. However, COUNSEL agrees to act as co-counsel with the City Attorney in those matters where the City Attorney determines that it is advisable to do so.

3.25. Appeals

No appeals or special actions may be filed without prior written approval of the CITY or CLIENT and the City Attorney.

3.26. Media Relations

COUNSEL is not authorized by the CITY or CLIENT to comment publicly on CLIENT or CITY matters. All media inquiries should be directed to the Contact Attorney.

3.27. Advertising and Promotion

The name of the City of Phoenix and, if applicable, of CLIENT, will not be used in any advertising or promotional context by COUNSEL without prior written approval of the City Attorney.

3.28. Record Retention and Return

At the conclusion of a matter, COUNSEL will notify the Contact Attorney that the matter is closed and prepare the file for shipment as set forth in the "File Handling Upon Completion" Attachment.

4. EVALUATION PROCESS

Evaluation Criteria

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	Evaluation Offers will be reviewed on a pass/fail basis for documentation of minimum qualifications, completeness, and compliance with the solicitation requirements. The City reserves sole discretion to determine the aforementioned areas, as well as responsiveness and responsibility. If the Offer meets the aforementioned areas, the Offeror will pass and be awarded an Agreement and placed on the City's Counsel List.	N/A	N/A

5. STANDARD TERMS AND CONDITIONS

5.1. Definition of Key Words Used in the Solicitation

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

"A.R.S." Arizona Revised Statute

"Buyer" or "Procurement Officer" City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

"Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.

"Days" Means calendar days unless otherwise specified.

"Chief Procurement Officer" The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

"Employer" Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

"Offer" Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

"Offeror" Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

"Solicitation" Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

5.2. Contract Interpretation

- A. **APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
 2. Special terms and conditions
 3. Standard terms and conditions
 4. Amendments
 5. Statement or scope of work
 6. Specifications
 7. Attachments
 8. Exhibits
 9. Instructions to Contractors
 10. Other documents referenced or included in the Solicitation
- C. **ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- D. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

- E. **NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

5.3. Contract Administration and Operation

- A. **RECORDS:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.
- B. **DISCRIMINATION PROHIBITED:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any contractor, in performing under this contract, will 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 supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and 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 will 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 supplier 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. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **EQUAL EMPLOYMENT OPPORTUNITY AND PAY:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as

amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

1. **For a Contractor with 35 employees or fewer:** Contractor 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 Contractor 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 Contractor 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. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
2. **For a Contractor with more than 35 employees:** Contractor 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 Contractor 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 Contractor 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. Contractor 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 Contractor 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.

3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
 4. **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.
- D. **LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
 2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
 2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
 3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. **COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances

when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

- G. **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.
- H. **CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- I. **EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

5.4. Costs and Payments

- A. **GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

- E. **NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- F. **FUND APPROPRIATION CONTINGENCY:** The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- G. **MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- H. **F.O.B. POINT:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

5.5. Contract Changes

- A. **CONTRACT AMENDMENTS:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. 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 Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- B. **ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- C. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the

City. The City reserves the right to obtain like goods or services from another source when necessary.

5.6. Risk of Loss and Liability

- A. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- B. **ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **FORCE MAJEURE:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the

work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

5.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- D. **DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

- F. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- G. **WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

5.8. Contract Termination

- A. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- B. **CONDITIONS AND CAUSES FOR TERMINATION:**
 - 1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
 - 2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
 - a. In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
 - b. In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
 - c. In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;

- d. Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
 - e. In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.
- C. **CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

5.9. State and Local Transaction Privilege Taxes

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

5.10. Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

5.11. Tax Responsibility Qualification

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

5.12. No Israel Boycott

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

5.13. No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.14. Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

5.15. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

5.16. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing

within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

6. SPECIAL TERMS AND CONDITIONS

6.1. Background Screening

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor 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.

6.2. 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 Contractor to incur additional contract costs to obtain background screens or badges.

6.3. Terms of This Section Applicable to all Contractor's Contracts and Subcontracts

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

6.4. 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, Contractor 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 Contractor. 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 Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor 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.

6.5. Continuing Duty; Audit

Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

6.6. Variances and Exemptions

Contract Workers who fall under the following areas may be considered exempt from this policy:

- Federal Homeland Defense Bureau.
- Transportation Security Administration.

- Federal Aviation Administration.
- Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
- Arizona or other State Bars.
- Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City’s discretion.

6.7. Background Screening – Standard Risk

- A. Determined Risk Level: The current risk level and background screening required is STANDARD RISK LEVEL
- B. Standard Risk Level: A standard risk background screening will be performed when the Contract Worker’s work assignment will:
 - 1. require a badge or key for access to City facilities; or
 - 2. allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
 - 3. allow unescorted access to City facilities during normal and non-business hours.
- C. 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 Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire.
- D. Contractor Certification; City Approval of Background Screening: Unless otherwise provided for in the Scope, Contractor will be responsible for:
 - 1. determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
 - 2. for reviewing the results of the background check every five years; and,
 - 3. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
 - 4. Submitting the list of qualified Contract Workers to the contracting department.
 - 5. For sole proprietors, the Contractor 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.
 - 6. By executing this agreement, Contractor certifies and warrants that Contractor 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, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

6.8. Confidentiality

“Confidential Information” means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively “Recipient”), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City’s written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

6.9. Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: <https://www.fpc.gov/resources/glossary/>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:

process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;

implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities

that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)

not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;

as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;

take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;

allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;

If the Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:

provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Data

Protection). Contractor's obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

6.10. Incorporation

The Agreement comprises of and expressly includes and incorporates the solicitation documents, including all attachments. These items set forth the terms and conditions applicable hereunder and are made effective mutually by the Contractor signing the Offer and the City signing the Acceptance and recording the executed Agreement with the City Clerk.

7. DEFENSE AND INDEMNIFICATION

7.1. Standard General Defense and Indemnification

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against 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 subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses 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 a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Notwithstanding the language herein, Indemnitor's obligations to defend, indemnify, save and hold harmless Indemnitee from and against any and all claims, actions, liabilities, damages, losses or expenses caused or alleged to be caused, in whole or in part, by the errors or omissions of Indemnitor or any of its officers, owners, agents, directors, employees or subcontractors, will only apply to claims covered by Indemnitor's professional liability insurance company. This Agreement does not purport to make the City of Phoenix an additional insured under the professional liability policy nor does subrogation apply to such claims.

8. INSURANCE REQUIREMENTS

8.1. Contractor's Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors 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 Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractors may purchase additional insurance as they determine necessary.

8.2. Scope and Limits of Insurance

Contractor 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 liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

8.3. Commercial General Liability – Occurrence Form

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 Contractor 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 Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

8.4. 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

- 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 Contractor, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

8.5. 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 contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

8.6. 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.
- Contractor 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 (2) years beginning at the time work under this Contract is completed.

8.7. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 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 jessica.arambula@phoenix.gov.

8.8. 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 Contractor from potential insurer insolvency.

8.9. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. 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 Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to jessica.arambula@phoenix.gov. The City project/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 Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

8.10. Subcontractors

Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract'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 Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

8.11. Approval

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

9. SUBMITTALS

9.1. Copies

Please submit one copy of the Submittal Section and all other required documentation. Please do not lock an electronic copy with password protection so that the CITY may digitally incorporate the successful offer into the awarded contract.

Please submit only the Submittal Section, do not submit a copy of the entire solicitation document. This Offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

9.2. Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The Offer should be:

- Typewritten for ease of evaluation
- Signed by an authorized representative of the Offeror
- Submitted with contact information for the individual(s) authorized to negotiate with the City

The Offer must include:

- Document 1 - a Letter of Transmittal as the first page(s) of the Offer including the following:
 - Statement indicating the submission of a formal Offer to "Outside Counsel Services, RFQu-LAW-23-0084".
 - General description of areas of specialization - please be specific about areas of law that your firm practices and is offering.
- Document 2 - a "conflicts letter" setting forth either (a) the nature of any representation currently adverse to the City of Phoenix or (b) a representation that there is no such legal activity adverse to the City or its interests.
- Document 3 - identification of the areas of legal services and applicable rates being offered by completing the Areas of Practice Rate Schedule form (attached hereto).
- Document 4 - a Certificate of Insurance providing coverage as described in the Insurance Requirements section(s) hererin. The failure to provide a Certificate of Insurance in conformity with insurance requirements will not disqualify the Offeror from being placed on the Counsel List of qualified attorneys and law firms but will be required prior to any work being assigned to any attorney or law firm. Any alternative insurance requirements must be approved by the City Attorney in their sole discretion.

- Document 5 - general background information with respect to the firm and attorneys/Individuals with special focus on the area of activity offered. The Offeror should indicate:
 - the size and experience of the firm;
 - the type of firm organization (e.g., partnership, professional corporation);
 - the overall areas of practice of the firm, including alternative dispute resolution services; and
 - specific information with respect to each area of specialization:
 - background and experience in providing work for that specific area of law, including experience representing government entities;
 - description of ability and capacity to meet the City's needs in a timely manner;
 - description of staffing levels available to provide the required legal services;
 - the names of the attorneys/individuals who will be assigned to provide legal services for that specific area of law;
 - the number of years they have been practicing in that area of law;
 - their position in the firm hierarchy for billing purposes (e.g., senior partner, junior partner, senior associate, junior associate);
 - their specialist certification (if any); and
 - references from current or former clients.
 - specific information evidencing the firm's commitment to diversity, which may include policies and procedures; existing initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training; and memberships or participation in diverse organizations.
- Document 6 - the Business Certification and Information form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 7 - the Affidavit form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 8 - the Solicitation Conflict and Transparency Disclosure form (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).
- Document 9 - the Offer Page (attached hereto) signed by the person with full authority to enter into any future binding agreement(s).

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred.

Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.