



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

**STREET TRANSPORTATION DEPARTMENT
PAVEMENT MAINTENANCE
CONSTRUCTION INSPECTION ON-CALL SERVICES
RFx 6000001489**

NOTIFICATION LETTER NO. 1

DECEMBER 5, 2023

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

Submittal of Statement of Qualifications:

Due to technical issues with the ProcurePHX RFx system, submittal of Statement of Qualifications (SOQ) for the Pavement Maintenance Construction Inspection On-Call Services are to be emailed to kathleen.kennedy@phoenix.gov by 12:00 noon, Phoenix time (Arizona time), on Friday, December 8, 2023.

Any SOQ received after 12:00 noon, Phoenix time, on December 8, 2023, will be disqualified.

QUESTIONS AND ANSWERS:

- Q1. Will there be a sample contract provided?
A1. See attached.

All other terms and conditions remain unchanged.

Attachments:

Sample Contract

A handwritten signature in cursive script that reads "Kathleen L. Kennedy".

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

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



**STREET TRANSPORTATION DEPARTMENT
PAVEMENT MAINTENANCE
CONSTRUCTION INSPECTION ON-CALL SERVICES**

AGREEMENT #

SAMPLE

TABLE OF CONTENTS

RECITALS..... 3
SECTION 1 – PROJECT DESCRIPTION 3
SECTION 2 – PERIOD OF SERVICE.....4
SECTION 3 – COMPENSATION AND PAYMENTS 4
SECTION 4 – CITY’S RESPONSIBILITY..... 5
SECTION 5 – CONSULTANT’S RESPONSIBILITIES 6
SECTION 6 – DEFINITIONS..... 7
SECTION 7 – GENERAL CONDITIONS..... 8
EXHIBIT A – INSURANCE AND INDEMNIFICATION REQUIREMENTS.....26
EXHIBIT B – BACKGROUND SCREENING (TO BE DETERMINED).....31
EXHIBIT C – TRAVEL REIMBURSEMENT PROCEDURE.....32
EXHIBIT D – DEPARTMENT SPECIFIC REQUIREMENTS (NOT USED).....35
EXHIBIT E – SBE/DBE REQUIREMENTS (NOT USED).....36
EXHIBIT F – SUPPLEMENTAL TERMS AND CONDITIONS (NOT USED).....37
ATTACHEMENT 1 - SCOPE OF SERVICES REQUIREMENTS AND STANDARDS...38
ATTACHMENT 2 - BILLABLE RATES.....39
ATTACHMENT 3 - INSURANCE CERTIFICATES.....40

SAMPLE

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

RECITALS

- A. The City Manager of the City of Phoenix, Arizona, is authorized and empowered by provisions of the City Charter and Code to execute Agreements for professional services.
- B. The City proposes to retain the Consultant for construction inspection services in support of the citywide Pavement Maintenance Construction Inspection On-Call Program on an as-needed basis.
- C. The City requires professional services for various City projects and desires to contract with the Consultant to provide these services.
- D. On _____, 20__, the Phoenix City Council passed Ordinance S-____, authorizing City to enter into this Master Agreement.

AGREEMENT

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

SECTION 1 – PROJECT DESCRIPTION

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

The Consultant, under the general supervision of the City Engineer of the City of Phoenix, will perform the following services as may be requested: Crack Seal, Scrub Seal, Slurry Seal, Micro-surfacing, Fog Seal, Pavement Mill and Overlay, ADA Curb Ramp Replacement and Other Portland Cement Concrete Repair, F.A.S.T (Fractured Aggregate Surface Treatment), and other related services.

General scope requirements and standards related to design and construction administration and inspection services are more fully described in the attached Attachment 1 - General Scope of Services Requirements and Standards.

SECTION 2 – PERIOD OF SERVICE

2.1. Period of Service

The Master Agreement is for a five-year term, commencing on February 1, 2024 through January 31, 2029. The Consultant will provide services under the Master Agreement for specific project assignments with a Notice to Proceed issued no later than the final day of the Master Agreement term. All work associated with the Project assignments under this Master Agreement must be completed no later than one year from the end of the Master Agreement term.

SECTION 3 – COMPENSATION AND PAYMENTS

- 3.1 The maximum fee to be paid to the Consultant under this Master Agreement will not exceed \$2,000,000.
- 3.2 Subconsultant fees are included as “Additional Services”.
- 3.3 The fees for Consultant are based on the agreed hourly rates, attached and incorporated in **ATTACHMENT 1**. These rates will be in effect for the duration of the Master Agreement and project assignments term.
- 3.4 Consultant must submit monthly requests for payment on City’s payment request form, which must include a progress report and detailed invoices (with receipts if applicable). Consultant’s submittal must also include: (1) a narrative description of tasks accomplished during the billing period; (2) a listing of any deliverables submitted; and (3) any subconsultant’s request for payment with similar narratives and listings of their work.
 - 3.4.1. City will pay for any services negotiated as a not-to-exceed fee according to the work effort expended on that service during the month.
 - 3.4.2. City will pay for any services negotiated as a lump sum according to the percentage of work completed during the month.
 - 3.4.3. City will pay for any Additional Services and Allowances as a not-to-exceed fee according to the work effort expended on that service during the month.
- 3.5 Consultant must submit all payment requests for City’s review and approval.
- 3.6 Consultant must pay all sums due to subconsultants for services and reimbursable expenses within seven days of Consultant receiving payment for those services from City. Consultant must pay subconsultants in accordance with Arizona Revised Statute § 34-221.

- 3.7. No compensation to the Consultant will be allowed contrary to Chapter XIX, Section 2, Phoenix City Charter (no payment of more than 90% of the total contract price before completion of the total work).
- 3.8. Consultant will be entitled to compensation only for those services and allowances specifically identified in the Notice to Proceed. Authorized additional services and reimbursable allowances must be billed at cost without any mark-up. Work or materials furnished by the Consultant without authorization from the City will be at the Consultant's own risk and expense.
- 3.9. Travel expenses must be approved in advance by the City and must be included in the Fee Schedule. The Consultant will be held to comply with **Exhibit C – Design and Construction Services Consultant & Contractor Travel Reimbursement Procedure**, as to the eligible and ineligible expenses for reimbursement and required documentation.

SECTION 4 – CITY'S RESPONSIBILITY

- 4.1 City will provide the following to Consultant:
 - 4.1.1. Timely examination of Consultant's submitted documents and prompt decision-making regarding Consultant's work (and Consultant's written requests for decisions) to avoid unreasonable delays.
 - 4.1.2. Regular updates concerning City's progress in reviewing Consultant's work.
 - 4.1.3. City's forms required from Consultant.
- 4.2. City is responsible for issuance of plans, specifications, and contract documents to bidders and other consultants and contractors.
- 4.3. City is also responsible for hiring the construction contractor, if applicable.
- 4.4. The City's authorized representative will be the City Engineer or another duly authorized City representative, who will be the sole contact and authority for administering this Agreement. City approvals or requests to Consultant will originate from the City Engineer or another duly authorized City representative.
- 4.5. The name of the designated Project Manager has the authority to administer the project assignment and will monitor Consultant compliance with all terms and conditions. All requests for information or decisions by the City on any aspect of the work must be directed to the Project Manager.
- 4.6. For each specific project, the City will specify the allocated budget available.

SECTION 5 – CONSULTANT’S RESPONSIBILITIES

- 5.1. The Consultant must perform professional services to the satisfaction of the City Engineer in accordance with the terms of this Agreement with the degree and with the care and skill that a registered professional in Arizona would exercise under similar conditions. The Consultant may discuss the Project or its requirements with the department that will ultimately use the facility, but all specific project direction or requests must be authorized by the City Engineer.
- 5.2. Consultant must provide the following to City in each project proposal:
 - 5.2.1. Scope of Work
 - 5.2.2. Subconsultant Information
 - 5.2.3. Hourly Billable Rates
 - 5.2.4. Project Schedule
- 5.3. Consultant must prepare all documents and materials according to the City’s standards, scope, and budget, subject to the City Engineer’s general inspection.
- 5.4. Consultant must perform the professional services under this Agreement’s terms to the City Engineer’s satisfaction and with the care and skill that another consultant in Consultant’s industry would exercise under similar conditions.
- 5.5. The documents prepared by the Consultant must not exceed the budget without express written approval from the City. The consultant, at the option of the City and without additional expense to the City, must without delay revise documents in a manner satisfactory to the City in an amount not exceeding the allocated budget.
- 5.8 City’s Project Management Information System
 - 5.8.1 The City provides an Application Service Provider (ASP) web-based project management database that the Consultant must utilize in performing all Work under the contract requirements. All project related documents are to be uploaded to UNIFIER. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the City Project Manager.
 - 5.8.2 The City requires the Consultant to maintain all project records in electronic format. To fulfill this requirement, the Consultant shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to the web- based ASP and transfer electronic data.
 - 5.8.3 The Consultant shall use this ASP to process all documents related to the Work, including, but not limited to: requests for interpretation/information, change orders, design meeting minutes and submittals.

5.8.4 The Consultant shall provide a computerized networked office platform with broadband internet connectivity. Either wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City's ASP system

5.8.5 UNIFIER training will be provided through the City. Contact information will be provided to the firms under contract, to establish the set up with a log-in and password.

SECTION 6 – DEFINITIONS

AGREEMENT (OR MASTER AGREEMENT):

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

AGREEMENT AMENDMENT:

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

APPLICABLE LAW:

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

A.R.S.:

Arizona Revised Statutes.

CERTIFICATE OF INSURANCE:

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

CITY:

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

CONSULTANT OR CONTRACTOR:

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

DAY(S):

Calendar Days unless otherwise specifically noted.

DEPARTMENT:

Department means the City Department overseeing the Agreement.

EFFECTIVE DATE OF THE AGREEMENT:

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

NOTICE TO PROCEED:

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

PAYMENT REQUEST:

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

SUBCONTRACT:

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

SUBCONSULTANT:

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

SECTION 7 – GENERAL CONDITIONS

7.1. INDEMNIFICATION AND INSURANCE REQUIREMENTS:

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

7.2. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER:

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

7.2.2. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Contract. The parties agree that no individual performing under this Agreement on behalf of the Consultant will be considered a City employee, and that no rights of

City Civil Service, City retirement or City personnel rules shall accrue to such individual. The Consultant shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals, and shall save and hold harmless the City with respect thereto.

7.3. LEGAL WORKER REQUIREMENTS:

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

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

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

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

7.4. CONFIDENTIALITY AND DATA SECURITY:

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

7.4.2. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or

destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

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

7.5. PROJECT DOCUMENT AND COPYRIGHTS

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

reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of the Work and this Contract. This license also includes the making of derivative works.

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

7.6. BACKGROUND SCREENING

See Background Screening Section – **Exhibit B.**

7.7. CONTACTS WITH THIRD PARTIES:

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

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

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

7.8. RECORDS / AUDIT:

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

7.8.2. The City, its authorized representative, and/or the appropriate federal agency reserves the right to audit the records of Consultant and

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

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

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

7.9. COMPLIANCE WITH LAWS:

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

7.10. ALTERATION IN CHARACTER OF WORK:

Whenever a change in the scope of work results in a substantial revision to this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, an Agreement Amendment shall be approved and executed by the City and the Consultant. Such Agreement Amendment shall not be effective until approved by the City. Additions to, modifications, or deletions from the services provided herein may be

made, and the compensation to be paid to the Consultant may accordingly be adjusted by mutual agreement of the parties. It is understood and agreed that no claim for extra work done or materials furnished by the Consultant will be allowed by the City except as provided herein, nor shall the Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Consultant without such written authorization first being given, shall be at the Consultant's own risk, cost, and expense, and the Consultant hereby agrees that without written authorization the Consultant will make no claim for compensation for such work or materials furnished.

7.11. INTEGRATION:

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

7.12. GOVERNING LAW; FORUM; VENUE:

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

7.13. TERMINATION OR SUSPENSION OF SERVICES:

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

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

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

- 7.13.1.3. Appraise any work partially completed and submit that appraisal to City for evaluation.
 - 7.13.1.4. Be paid full compensation for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Consultant in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.
 - 7.13.1.5. If the City determines it improperly terminated the agreement for cause or default, the termination shall be converted to a termination for convenience in accordance with the provisions of this agreement.
- 7.13.2. **TEMPORARY SUSPENSION:** The City may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and not due to fault or negligence of Consultant, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.

7.14. SPECIFIC PERFORMANCE:

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

7.15. FORCE MAJEURE:

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

7.16. DOCUMENTATION:

- 7.16.1. **DISSEMINATION AND RETENTION:** There will be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Consultant will relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Consultant pending the resolution of the existing or anticipated litigation.
- 7.16.2. Format and quality: all documents prepared by Consultant will be prepared in a format and at a quality approved by the City.
- 7.16.3. Document review: Consultant will review all documents provided by the City related to the performance of the services and will promptly notify the City of any defects or deficiencies discovered in such review.
- 7.16.4. Confidentiality of plans: any plans Consultant generates must include the following statement in the title block on every page: "under Phoenix City Code § 2-28, these plans are for official use only and may not be shared with others unless otherwise permitted by contract to fulfill Consultant's obligations to City."

7.17. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:

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

7.18. CONFLICTS OF INTEREST:

- 7.18.1. Consultant acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have

the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

7.18.2. The City reserves the right to immediately terminate the contract in the event that the City determines that Consultant has an actual or apparent conflict of interest.

7.18.3. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Consultant, terminate the right of Consultant to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Consultant as could be pursued in the event of default by Consultant.

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

7.19. NOTICE:

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

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

7.20. PUBLIC RECORDS:

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

understands that disclosure of some or all of the items subject to this Agreement may be required by law.

- 7.20.2. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which will be deemed given when deposited by the City with the USPS for regular delivery to the address of the Consultant specified in this Agreement. Within ten calendar days of notice from the City, the Consultant must inform the City in writing of any objection by the Consultant to the disclosure of the requested information. Failure by the Consultant to object within ten calendar days of notice will be deemed to waive any objection and any remedy against the City for disclosure.
- 7.20.3. In the event the Consultant objects to disclosure within ten calendar days, the Consultant agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Consultant does not object thereto. Furthermore, the Consultant agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

7.21. CLAIMS OR DEMANDS AGAINST THE CITY:

- 7.21.1. Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Consultant agrees to adhere to the prescribed procedure for presentation of claims and demands.
- 7.21.2. Pursuant to Phoenix City Charter Chapter 18, the City reserves the right to withhold funds from the Consultant's progress payments up to the amount equal to the claims the City may have against the Consultant until such time that a settlement on those claims has been reached.
- 7.21.3. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

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

7.22. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:

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

7.23. DISPUTES:

7.23.1. The City Engineer will decide any dispute regarding this Agreement's interpretation that City and Consultant cannot resolve by mutual agreement.

7.23.2. Consultant agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement each party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

7.23.3. Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement will not be deemed a waiver.

7.24. THIRD PARTY BENEFICIARY CLAUSE:

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

7.25. LAWFUL PRESENCE REQUIREMENT:

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is

unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

7.26. EQUAL EMPLOYMENT OPPORTUNITY:

- 7.26.1. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
- 7.26.2. For a Consultant with 35 employees or fewer: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Consultant will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, Consultant agreements or subleases of this agreement entered into by supplier/lessee.
- 7.26.3. For a Consultant with more than 35 employees: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Consultant will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts with all

labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Consultant further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Consultant further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

7.26.4. Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

7.26.5. Monitoring: The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7.27. SUCCESSORS AND ASSIGNS:

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

7.28. CONSULTANT'S DUTY OF CARE:

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

7.29. PROJECT STAFFING:

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

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

7.30. SUBCONSULTANTS:

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

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

7.31. NON-WAIVER PROVISION:

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

7.32. SURVIVAL:

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

7.33. SEVERABILITY:

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

7.34. TIME IS OF THE ESSENCE:

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

7.35. DATE OF PERFORMANCE:

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

7.36. WORK IN CITY’S RIGHT-OF-WAY:

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

7.36.1. All Work performed within the City’s Right-of-Way by the Consultant and its subconsultants will comply with all the regulations contained in the City of Phoenix Traffic Barricade Manual and the City of Phoenix Right-of-Way Management Program (latest editions) and any other traffic control provisions as may be provided in the technical Specifications. The City of Phoenix Traffic Barricade Manual is available online at:

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

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

7.37. CONTRACT AMENDMENTS:

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

7.38. REQUEST FOR CONTRACT ADJUSTMENTS AND RELIEF:

7.38.1 If either the Consultant or the City believes that it is entitled to relief against the other for any event arising out of or related to Contract Services, such party will provide written notice to the other party of the basis for its claim for relief.

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

7.39. REPRESENTATIVES OF THE PARTIES:

City's Representatives

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

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

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

Consultant's Representatives

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

Name, Title
Firm Name
Address
City, Arizona 85XXX

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

7.40. NOTICES:

General Notices

Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (1) confirmed delivery by hand or standard overnight mail or (2) upon the expiration of three

business days after the day mailed by certified mail, to the Representatives identified above, or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

7.41. NO ISRAEL BOYCOTT:

If this Contract is valued at \$100,000 or more and requires Consultant (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 Consultant 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, Consultant 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.

7.42 NO FORCED LABOR OF UYGHURS:

If this Contract requires Consultant (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 Consultant must certify and agree that it and any consultants, subconsultants, 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, Consultant, 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 consultants, subconsultants, 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.

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

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

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

By: _____
Eric J. Froberg, PE, City Engineer

By: _____
Name of Signatory, Title

ATTEST:

City Clerk

APPROVED AS TO FORM,
JULIE M. KRIEGH, City Attorney

By: _____

EXHIBIT A

INSURANCE AND INDEMNIFICATION REQUIREMENTS

1. DEFENSE AND INDEMNIFICATION CLAUSE:

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

2. CONSULTANT’S INSURANCE:

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

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

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

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

2.1.1. Commercial General Liability – Occurrence Form

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

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

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

2.1.2. Automobile Liability

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

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

2.1.3. Worker's Compensation and Employers' Liability

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

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

2.1.4. Professional Liability (Errors and Omissions Liability)

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

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

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

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

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

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

Each registered subconsultant will carry:

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

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

Structural, civil, mechanical, plumbing, electrical engineers will carry:

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

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

All other registered subconsultants not listed above will carry:

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

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

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

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

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

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

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

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

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

SAMPLE

EXHIBIT B
BACKGROUND SCREENING
(TO BE DETERMINED)

SAMPLE

EXHIBIT C

DESIGN AND CONSTRUCTION SERVICES CONSULTANT AND CONTRACTOR TRAVEL REIMBURSEMENT PROCEDURE

The City of Phoenix (City) is a public entity and strives to be a good and responsible steward of public monies. Consultants and Contractors must therefore use good judgment and have proper regard for economy and reasonableness when incurring any reimbursable travel expenses.

The purpose of this procedure is to ensure reimbursable expenses are reasonable, necessary, and documentable. In particular, this procedure (1) identifies which travel expenses are reimbursable, (2) defines reimbursement limits, and (3) describes the documentation that must be submitted to the City before travel expenses will be reimbursed. This list is a guide and is not all-inclusive.

Reimbursable Expenses and Reimbursement Limits

Travel expenses are reimbursable only when the Agreement or Contract provides for a travel allowance or for travel reimbursement. Except as otherwise provided below, all expenses must be approved by the Project Manager before they are incurred in order to be reimbursable. Reasonable travel expenses are defined as follows:

Air Transportation – Airfare (and luggage fees if project related) are reimbursable, but are subject to the following limits:

- Reimbursement for airfare will not exceed the economy or coach class airline fares, or equivalent. The least expensive rate at the time should be booked.
- If additional costs are incurred for rescheduling, then the costs and circumstances must be explained. These costs will be evaluated on a case-by-case basis and will be approved for reimbursement only if justifiable. Flights should be booked as early as possible, and flight rescheduling should be avoided.
- Travel insurance and early-bird fees and/or other additional expenses are not reimbursable.

Ground Transportation – Ground transportation expenses at the travel destination (e.g., taxis, cars for hire, shuttles, or subways/trains) are reimbursable when traveling by air, rail, or bus, but are subject to the following limits:

- Rental vehicles are to be authorized only when their use is less expensive than using taxis, cars for hire, shuttles or subways/trains.
- Reimbursement for a rental vehicle will not exceed the Standard rate category. In estimating the cost of a rental vehicle, parking at the destination city must also be included.
- Car/limousine services and non-project-related ground transportation expenses are not reimbursable.
- Reimbursement for parking expenses does not require prior approval by the Project Manager if the Consultant/Contractor later demonstrates that prior approval was not feasible under the circumstances. But reimbursement is still subject to subsequent approval by the Project Manager.
- The City will reimburse airport parking charges up to \$14 per travel day regardless of parking facility used.

- Taxi services (between home and airport) - Usage of shuttles, taxi, ride-sharing services, light rail (or similar business provider) will be reimbursed up to the total allowable amount for airport parking, which is currently reimbursed at \$14 per travel day.

Lodging – Project-related lodging expenses at the travel destination are reimbursable, but are subject to the following limits:

- Reimbursement will not exceed the applicable seasonal rate listed in the City of Phoenix Domestic Lodging Rate Schedule, as indicated below:
 - September 1 through May 31 \$166
 - June 1 through August 31 \$106
- Charges to the Consultant's/Contractor's hotel room for project-related expenses, such as for fax, internet access, and long-distance calls, must be itemized and categorized appropriately on the invoice submitted for reimbursement.
- Non-project-related charges, such as for movies, room service, or "mini-bar" items, are not reimbursable.

Meals – Meal expenses, including expenses for food purchased at a grocery store, are reimbursable, but are subject to the following limits:

- Reimbursement generally will be limited to meals purchased during each day of scheduled project-related meetings at the travel destination. Reimbursement may extend to up to one additional day of meals to accommodate travel if approved by the Project Manager.
- Reimbursement for any meal will not exceed the GSA standard rate for that meal. To illustrate – A Consultant/Contractor does not have breakfast or lunch, but has a dinner that costs more than the GSA standard dinner rate. The Consultant/Contractor will not be reimbursed beyond the GSA standard dinner rate, even though the total meal cost for the day is less than the GSA standard rate for the day.
- Consultants/Contractors traveling together and eating together should each receive an individual check or receipt. Meals purchased for any other out-of-town Consultant/Contractor will count against the other Consultant's/Contractor's reimbursement limit. The names of the other Consultants/Contractors for whom meals are purchased must be listed on the receipt.
- Restaurant charges to the Consultant's/Contractor's hotel room must also be itemized on a receipt showing what was purchased.
- All receipts submitted for reimbursement must be itemized.
- Alcoholic beverages, snacks, meals purchased in the Consultant's/Contractor's home metropolitan area, and meals purchased for non-project-related persons or for persons who work in the travel destination metropolitan area are not reimbursable.
 - Max Daily M&IE Rate \$69 – Full Day / \$51.75 - First/Last Day

Gratuities – Meal, taxi, baggage handling, and housekeeping gratuities (i.e., "tips") are reimbursable, but are subject to the following limits:

- Meals - Reimbursement for meal gratuities will not exceed 20% of the pre-tax bill. In no event will total reimbursement for meals, meal taxes, and meal gratuities exceed the GSA meal limits described above.

- Taxis - Reimbursement for taxi gratuities will not exceed 20% of the pre-tax bill.
- Baggage Handling and Housekeeping - Total reimbursement for baggage handling and housekeeping gratuities will not exceed \$5 per day. Receipts for baggage handling and housekeeping gratuities are not required. However, tips not paid must not be submitted for reimbursement.

Travel Expense Report Submittal

Except as otherwise provided above, reimbursement requests must be submitted monthly and must include receipts and invoices.

In addition to any other special documentation described above, the following is required for all reimbursement requests:

- All receipts for a single trip must be submitted together on a pay request and not split into two or more requests.
- A summary report must also be submitted showing the amounts being requested for each trip, including the name of the Consultant/Contractor who traveled and the dates of the travel.
- A copy of all pre-approvals must be attached to the pay request.
- Changes to a submitted pay request or a submitted summary report must be accompanied by a detailed explanation whenever the change results in additional requested reimbursement.

EXHIBIT D

DEPARTMENT SPECIFIC REQUIREMENTS

(NOT USED)

SAMPLE

EXHIBIT E

SBE/DBE REQUIREMENTS

(NOT USED)

SAMPLE

EXHIBIT F
SUPPLEMENTAL TERMS AND CONDITIONS
(NOT USED)

SAMPLE

ATTACHMENT 1

GENERAL SCOPE OF SERVICES REQUIREMENTS AND STANDARDS FOR CONSTRUCTION ADMINISTRATION AND INSPECTION

Street Transportation Department projects that are ongoing or scheduled for construction citywide could be assigned. Work will be performed within the Public Right of Way. Current projects include the Accelerated Pavement Maintenance Program.

It is anticipated that inspection assignments may include, but are not limited to the following types of work:

- Crack Seal
- Scrub Seal
- Slurry Seal
- Microsurfacing
- Fog Seal
- Pavement Mill and Overlay
- ADA Curb Ramp Replacement and Other Portland Cement Concrete Repair
- F.A.S.T (Fractured Aggregate Surface Treatment)
- Other scopes as assigned

The consultant will provide vehicles, fuel, code books, cellular phones, and laptops/tablets for the field inspection team, and other equipment deemed necessary to complete the tasks. Cell phones and laptop/tablet must have full field connectivity. Inspections must be entered in real time during the workday. Consultant must provide technical support for their equipment.

CONSTRUCTION INSPECTORS

The Construction Inspectors shall act as an extension of the City of Phoenix Street Transportation Department staff in all matters performed for inspections.

At minimum, a Senior Construction Inspector is required to provide the services.

Construction inspectors require knowledge of construction practices, civil engineering principles and techniques, terminology, and materials used in construction.

GENERAL SCOPE OF WORK

The consultant will be responsible for providing services including, but not limited to:

- Perform inspections on a per project basis
- Monitor and document construction progress by contractors
- Daily interaction with the contractor(s) (may include irregular work hours)
- Inspect construction operations and materials used by contractors
- Observe, record, and review performance tests
- Prepare daily reports, test results, and photo records
- Inspect and enforce barricade set-ups in accordance with City of Phoenix Traffic Barricade Manual
- Review of punch list items
- Review and coordinate to contractors "request for information" (RFI), submittals, and change orders with City's supervisory and project manager, and provide response as needed
- Work under the direction of the Streets Construction Inspection Supervisor
- Provide other services as required to support successful completion of the work and City's interest

The Consultant's services involving construction administration and inspection services may include, but are not limited to, the following general requirements and standards, unless otherwise provided for in the individual scope of services incorporated as a part of a Notice to Proceed for a specific project.

GENERAL CONSTRUCTION ADMINISTRATION AND INSPECTION SERVICES

A. The Consultant must perform Construction Administration and Inspection services on the project

assignments released under this Contract according to the direction and standards of the City.

- B. The Consultant must: attend the pre-construction conference which will be arranged and called for by the City; be prepared to respond to questions; and prepare a "Record of Preconstruction Conference" which will be distributed to all attendees. The Consultant will: attend project meetings as necessary to maintain the project budget and schedule; chair periodic regular meetings on site and any additional meetings as requested by the City; set agendas and prepare and distribute minutes.
- C. The Consultant must furnish the services of a competent inspector during the progress of construction. The Consultant must coordinate the inspection, facilitate the work in general, and perform miscellaneous inspection work as required to assure that the work is constructed in accordance with the Contract documents and accepted standards of the construction industry. The Consultant must not have the direct control of the individual workmen and their work. The direct control will be solely the responsibility of the contractor (referred to as "Contractor"), to the extent provided by the contract between the City and the Contractor.
- D. The Consultant will provide Construction Administration and Inspection as required for substantial compliance with the Contract documents. Consultant will keep the City informed of the progress of the work, endeavor to guard the City against defects and deficiencies in the work of the Contractor, and must reject or stop work, as appropriate, that fails to conform to the Contract documents. The Consultant or Consultant's authorized representative must keep adequate project records and field reports of work during construction.
- E. The Consultant must make recommendations to the City on matters relating to the interpretation of the Contract documents.
- F. The Consultant must review the Contractor's submittal schedule which will list all submissions required by Contract documents.
- G. The Consultant must establish a submittal control sheet to monitor the timeliness of Contractor submissions, and review and make recommendations to the City relating to the execution and progress of the project.
- H. The Consultant must provide the necessary survey controls for the Contractor's guidance and verify the correctness of the work as it progresses.
- I. The Consultant must: review and monitor schedules; and review and approve or take other appropriate action on samples, shop and setting drawings; coordinate testing, review and make recommendations on reports from testing laboratory(ies), and other submissions for conformity with the design concept of the project and for compliance with the Contract documents.
- J. The Consultant must monitor and log Contractor correspondence and provide the City with all documents, reports and correspondence pertaining to the project.
- K. All construction testing must be done under the supervision of the Consultant.
- L. The Consultant must require a copy of the Dust Control Permit and Plan and must ensure compliance with the dust control measures listed in the Plan. The Consultant must notify the City Engineer's authorized representative in the event of a noncompliant condition, a citation or Notice of Violations.
- M. The Consultant must submit reports of the job site visit which will summarize the activities at the time of the visit and progress made since the last visit. Maintain thorough and complete daily inspection diaries and prepare daily reports. These reports will be submitted to the City bi-weekly.
- N. The Consultant must make construction monthly progress reports to the City covering the general progress of the project and describing any problems or factors contributing to delay and recommending solutions or resolutions where appropriate.
- O. The Consultant must review and make recommendations to the City on all claims of the Contractor for extra work not covered in the Contract documents, and the recommendations will be jointly reviewed by the Consultant and the City for final decisions. The Consultant will review construction change orders for approved extra work and time extensions not covered in the Contract documents

brought about by Contractors' claims.

- P. For all changes, additions or deletions requested by the City, the Consultant will obtain all information required and present the Consultant's recommendations. The City will either approve or deny the recommendation.
- Q. The Consultant will verify the amount owed to the Contractor and will sign and issue City Form, "Estimate for Payment," in that amount. This "Estimate for Payment" will constitute a representation to the City that the work has progressed to the point indicated. By issuing an "Estimate for Payment," the Consultant will also represent to the City that, to the best of the Consultant's knowledge, information, and belief, based on what the Consultant's inspections and observations have revealed, the quality of the work is in substantial compliance with the Contract documents.
- R. The Consultant will attend joint inspections with the City to determine the dates of substantial and final completion and so inform the City Engineer in writing, when completed. After the City accepts the project, the Consultant will promptly issue a final "Estimate for Payment," with two completed and signed copies of City Form, "Settlement of Claims."
- S. The Consultant must provide project close-out related services including:
 - 1. Conduct final close-out inspections, prepare a project punch list including the City's concerns, and verify that the items indicated on the list are corrected prior to final acceptance.
 - 2. Verify that all documentation required of the Contractor per the construction contract has been submitted and is acceptable to the City.
 - 3. Review, assemble and provide all warranties, files, operating manuals, logs and other close-out paperwork as described in the project specifications at the completion of the project.
 - 4. Verify that all correspondence, shop drawings, directives, and RFI's, are delivered to the City.
 - 5. Review and approved all lien waivers prior to the final payment to the Contractor.
 - 6. Verify that additional construction materials are delivered to the City by the Contractor.
 - 7. Evaluate the Contractor's performance and complete the "Contractor's Performance Review" form.
- T. Incidental to the services for the project, the Consultant agrees to notify the Contractor and the City of any unsafe conditions that the Consultant may see and recognize at the construction site and take immediate corrective action, if required. However, it is not intended that the Consultant be responsible for safety at the project site.

ATTACHMENT 2

BILLABLE RATES

FIRM HOURLY BILLABLE RATE

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

SAMPLE

ATTACHMENT 3
INSURANCE CERTIFICATES

(ATTACHED)

SAMPLE