



City of Phoenix

REQUEST FOR QUOTATION
RFQ FY24-086-09 (MBT)
LOAN SERVICES (REAL ESTATE) HOUSING
DEPARTMENT

City of Phoenix
Housing
251 W Washington St., 4th Floor
Phoenix, AZ
85003

RELEASE DATE: January 9, 2024
DEADLINE FOR QUESTIONS: January 23, 2024
RESPONSE DEADLINE: February 9, 2024, 2:00

pm

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REQUEST FOR QUOTATION
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Attachments:

- A - Submittals - Costs and Payments rev 2-2023
- B - Submittals - Debarment & Exclusion rev 2-2023
- C - Submittals - Contractor Licensing Requirements rev 2-2023
- D - Submittals - References rev 2-2023
- E - Submittals - Price Schedule
- F - Submittals - Offer Page rev 3-2023
- G - Acceptance_Form_2023_rev_2-2023 (10)

1. Introduction

1.1. Summary

The City of Phoenix Housing Department is seeking a qualified contractor to service and maintain its affordable housing loan portfolio. Proposers must demonstrate extensive experience and superior capability for servicing loans made by public sector entities and loans subject to governmental program regulations and requirements.

1.2. Background

Currently, the Housing Department has ninety-eight (98) loans to be serviced with the expectation that additional loans will be added to the portfolio each year of the contract.

The City currently has the following types of loans:

- Amortized Loans
- Deferred Payment Loans
- Surplus Cash Flow Loans
- Compound Interest Loans

1.3. Contact Information

Melanie Bynoe-Torzala

Management Assistant II – Contracts and Procurement

251 W Washington St., 4th Floor

Phoenix, AZ 85003

Email: melanie.bynoe.torzala@phoenix.gov

Phone: [\(602\) 262-4927](tel:(602)262-4927)

Department:

Housing

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 (Melanie Bynoe-Torzala) at (602) 262-4927/Voice or 711/TTY, or melanie.bynoe.torzala@phoenix.gov, no later than two (2) weeks prior to the meeting.

Solicitation Issue Date	January 9, 2024
Written Inquiries Due Date	January 23, 2024, 2:00pm
Offer Due Date	February 9, 2024, 2:00pm

2. Instructions

2.1. Statement of Work

The City of Phoenix invites sealed offers for firm(s) to provide loan servicing for the City's affordable housing loan portfolio. for a five-year commencing on or about May 1, 2024, 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.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised; or payment of the maximum compensation under this Agreement; or termination pursuant to the provisions of this Agreement.

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 Quote

- A. All forms provided in Submittal Section must be completed and submitted with the Quote.
- B. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Quote must be initialed in original ink by the authorized person signing the Quote. No quote will be altered, amended or withdrawn after the specified quote due date and time. The City is not responsible for Offerors errors or omissions.
- C. All time periods stated as a number of days will be calendar days.
- D. It is the responsibility of all Offerors to examine the entire document and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a quote. Negligence in preparing a quote confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
 1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 2. Study and carefully correlate Offerors knowledge and observations with the Agreement and other related data.
 3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the Agreement and other related documents.

4. Offerors are reminded that the specifications stated in the Agreement are the minimum level required and that quotes submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this Agreement. Quotes with less than any minimum specifications or criteria specified are not responsive and should not be submitted.
5. Quote responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products quoted. Quotes submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products
6. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

2.4. Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this agreement. Quotes submitted with exceptions will be deemed non-responsive and disqualified from further consideration. Offerors must conform to all of the requirements specified in the agreement. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Quote.

2.5. Inquiries

All questions that arise relating to this agreement should be directed via email to the Procurement Officer.

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 agreement until after the closing date and time for the submission of quotes. All questions concerning or issues related to this agreement must be presented in writing.

2.6. Business in Arizona

The City will not enter into contracts with foreign corporations not granted authority to transact business, or not in good standing in the state of Arizona, with the Arizona Corporation Commission.

2.7. Licenses

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

2.8. Certification

By signature in the Offer and Acceptance page, Offeror certifies:

- The submission of the Quote 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 Quote.

2.9. Award of Contract

Unless otherwise indicated, award(s) will be made to the lowest quote, and Offeror(s) who have demonstrated the ability to perform the required service in an acceptable manner.

Factors that may be considered by the City include:

- A. Technical capability of the Offeror to accomplish the scope of work required in the Agreement. This includes performance history on past and current government or industrial contracts; and,**
- B. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Agreement; and,**
- C. Safety record; and,**
- D. Offeror history of performance and termination for convenience or cause.**

Notwithstanding any other provision of this Agreement, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all quotes or portions thereof.

A response to a request for a quote is a Quote to contract with the City based upon the terms, conditions, and specifications contained in the City's agreement. Quotes do not become contracts until they are executed by the Deputy Finance Director or Department Director. All of the terms, conditions and specifications of the procurement contract are contained in the agreement, and in any addendum or amendment.

2.10. City's Right to Disqualify for Conflict of Interest

The City reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Quote submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting a Quote herein waives any right to object now or at any future time, before anybody or agency, including but not limited to, the City Council of the City of Phoenix or any court.

3. Scope of Work

3.1. Servicing the City's Housing Department's Loan Portfolio

- A. The successful Proposer ("Contractor") must service each loan in the Department's loan portfolio from inception through payoff, default, foreclosure, or other termination events. The Services to be provided by the Contractor include furnishing billing statements to each borrower and responding to borrower requests for information as needed. The Contractor will be responsible for providing all notices, statements, forms, and reports required by the Internal Revenue Service (IRS) in connection with each loan and shall provide each borrower with an annual history of activity, interest, and balance information on individual loan.
- B. In addition to the preceding requirements, the Contractor must make all loan portfolio data available to the City via the Internet in a secure environment that maintains the confidentiality of the information. Such data must be available for viewing, printing, or downloading by the City. The Contractor also must provide Borrowers with secure internet access to their personal loan information. The Contractor's loan system must accommodate tracking of Amortized Loans, Deferred Payment Loans, Surplus Cash Loans, and Compound-Interest Loans. The Contractor must allow borrowers the option to make monthly or annual payments via secure automatic withdrawal from their bank account(s), mail, or by phone.
- C. The Contractor must maintain an ongoing record of and receive scheduled payments on each loan according to the corresponding contract and loan terms. The Contractor must remit to the City monthly the total receipts of principal, interest, and all other fees collected in carrying out its servicing obligations together with a remittance manifest and delinquency report. Some loans may have escrow accounts for property taxes and insurance; the Contractor must manage and account for deposits and payments from such escrow accounts. The Contractor must account for loans according to separate loan categories and funding sources designated by the City and disburse monthly proceeds to the City by funding source.

3.2. Project-Based Loans

- A. **Loan Portfolio:** The Department's loan portfolio currently includes Amortized Loans, Deferred Payment Loans, Surplus Cash Loans, and Compound Interest Loans. Other loan types may be added as necessary.
- B. **Servicing Requirements:** The Contractor must comply with current loan servicing rules and statutes created by the Consumer Financial Protection Bureau. The Contractor may provide some or all of the following services as directed by the City:
- C. For all loans:
 - a. The City will initiate the preparation of all mortgage instruments, make all required regulatory and compliance disclosures, close all loans, and transmit the

- loan documents to the Contractor as necessary for effective loan set-up and servicing.
- b. The Contractor must maintain an ongoing record of all loans and provide diligent and customary functions to service each loan on a month-to-month, semi-annual, or annual basis as applicable.
 - c. The Contractor must provide a separate monthly accounting remittance manifest to the City for each loan type. The Contractor must be able to remit monthly proceeds by separate category or funding source as designated by the City.
 - d. The Contractor must provide billing statements to borrowers to use when making scheduled payments.
 - e. The Contractor must provide the borrower an annual history of the individual loan account activity.
 - f. At the City's discretion, the Contractor must provide annual affidavits to property owners to execute as necessary to establish continued compliance with non-monetary terms and conditions of promissory notes.
 - g. The Contractor must provide default follow-up services, including letters, due diligence phone calls, and forbearance workouts, which the City must approve.
 - h. The Contractor must inform the borrower of delinquency and default by a letter at thirty (30), sixty (60), and (90) days past the payment due date.
 - i. The Contractor will be responsible for the foreclosure process within industry standards. Upon the City's approval, and following respective local, state, and federal statutes, the Contractor will send the borrower a notice of intent to foreclose/demand letter, with a copy to the City. Upon the City's direction, the Contractor will proceed with a foreclosure. The Contractor will properly document all steps taken to affect a cure.
 - j. The Contractor must notify credit bureaus in writing of defaulted loans as directed by the City.
 - k. The Contractor must make available, via a secure and password-protected website, twenty-four (24) hours a day, seven days a week: (A) to the City all loan portfolio data; and (B) to borrowers all information about the borrowers' loans.
 - l. The Contractor must submit required 1098 tax information returns each year as required by the IRS or other applicable taxing authorities on behalf of the City for any borrower paying interest on a City loan. Such information returns shall be issued as required by the IRS or other taxing authorities, and copies must simultaneously be provided to the City.
 - m. Deliver all loan payoffs received by the Contractor to the City by the 15th of the following month.

- n. Deliver all payments to the City by the 10th of the following month.
1. For Amortized Loans, in addition to the requirements listed above, the Contractor must:
 - a. Upon notification of cancellation by the borrower's insurance carrier or when annual endorsements are not received, upon request by the City, a new insurance provider will be forced-placed by the Contractor at the borrower's cost.
2. For Deferred Loans, in addition to the requirements listed above, the Contractor must:
 - a. Provide the City every quarter the loans whose deferral period will terminate within one hundred and twenty (120) days.
3. For Surplus Cash Loans in addition to the requirements listed above, the Contractor must:
 - a. Notify the borrower by issuing a billing statement of the payment amount required if the City approves the residual amount.
 - b. Perform necessary follow-up for payment of all residual receipt invoices billed, including collection activity.
 - c. Provide the City with a Delinquent Aging Report every month.
 - d. Apply residual receipt payments in accordance with the terms of the applicable promissory note and loan agreement.
4. For Compound Interest Loans, in addition to the requirements listed above, the Contractor must:
 - a. Conduct a detailed review of the payment histories to determine posting accuracy, interest calculation accuracy, and compliance using the terms in the Promissory Note.
 - b. Review each individual Promissory Note and loan payment history for understanding.
 - c. Create and use spreadsheets for each individual loan using calculations based on the Promissory Note and loan histories.
5. Upon request by City the Contractor must:
 - a. Review the annual financial statements of a borrower and provide feedback to the City regarding the reasonableness of the statements.
 - b. Review the promissory note and loan agreement to determine the appropriate method by which residual receipts will be calculated.

- c. Review the annual financial statements of a borrower and provide feedback to the City whether the borrower has the present capacity to pay the city loan and, if so, calculate the payment amount based on the Note and Loan Agreement.
- d. Prepare and forward a Residual Receipt Analysis Report to the City, recommending:
 - Continued deferral, or
 - Amount of residual receipt payment required.
- e. Perform no further work for thirty (30) days if the City approves the deferral in writing.

3.3. Delinquency and Default Management:

- A. The Contractor must forward delinquency letters to new borrowers whose loans are in default at five (5) and fifteen (15) days past the first payment due date.
- B. The Contractor must forward delinquency and default letters to existing borrowers whose loans are in default at thirty (30), sixty (60), and ninety (90) days past the payment due date.
- C. The Contractor must attempt due diligence phone calls to defaulted borrowers beginning at thirty-one (31) days past the payment due date.
- D. The Contractor must document a borrower's commitment to repay past due amounts.
- E. If a borrower cannot pay the past due amounts immediately, the Contractor must recommend the institution of a forbearance plan.
- F. If a default is not cured through the above measures, the Contractor with City approval will begin foreclosure proceedings.

3.4. Insurance Claims Assistance:

The Contractor will assist the homeowner and the City with funds experienced from claims to their home such as fire, flood, or wind damage. The Contractor will work with the City to ensure insurance payment transactions are released upon City approval and inspections.

3.5. Loan Forbearance Services:

- A. The City, at its discretion, may develop a written forbearance plan with an individual borrower. The Contractor must implement any such forbearance plan immediately after receipt from the City.
- B. The Contractor may immediately implement a forbearance plan of less than six (6) months' duration without formal modifications of loan documents if executed by the borrower. Contractor must immediately provide the City a copy of such forbearance plan.

- C. Formal modifications to promissory note terms and forbearance plans over six (6) months shall be forwarded to the City for pre-approval. The City must approve the forbearance plan in writing before the borrower executes the agreement.
- D. Once approved, the Contractor shall develop and implement any forbearance plan immediately after receipt from the City.
- E. Forbearance Evaluation Process: A hardship is defined as a situation or set of events or circumstances beyond the standard control of the borrower that prohibits the borrower from adhering to a planned repayment schedule. If a borrower states, either verbally or in writing, that a hardship situation exists, the Contractor must document the circumstances and provide the following:
 - o Letter from borrower requesting City's consideration of a hardship;
 - o Nature of the hardship;
 - o Expected duration of the hardship; and
 - o Forbearance Plan Proposal.
- F. If the City approves the Forbearance Plan Proposal and executes the agreement with the borrower, the Contractor will resume loan servicing under the new payment plan. The account will receive a follow-up 30 days before and at the expiration of the temporary plan. The Contractor's main objective is to formulate a forbearance plan to keep the loan current as soon as possible, but the Contractor may recommend forbearance plans that defer all or part of the regular repayments for a specified period.
- G. If a borrower defaults under an executed forbearance plan, the Contractor must recommend in writing that foreclosure proceedings be initiated.

3.6. Loan Foreclosure Services:

- A. Upon the City's written request, the Contractor will proceed to foreclosure. The Contractor will properly document all steps to affect a cure, including sending and recording the Notice of Default.
- B. To reinstate a note borrowers must have paid all sums past due according to the terms of the note together with all collection and foreclosure costs incurred by the City.
- C. If a borrower reinstates its loan through City approval, the Contractor will resume regular loan servicing and collection activities.

3.7. Subordinations:

- A. Upon receipt of a request for subordination, the Contractor must refer the request or forward the Subordination Request Package to the City for review.

3.8. Bankruptcy Monitoring Services:

Upon receipt of notification of Chapter 7 or Chapter 13 Bankruptcy from the Federal Bankruptcy Court or Court appointed trustee affecting a loan in the loan portfolio, the Contractor will forward the notice to the City within five (5) days and report the status of the borrower's bankruptcy in the borrower's loan account maintained by the Contractor. Following receipt of a copy of the proof of claim filed by the City in Bankruptcy Court and upon reaffirmation of the City loan by the borrower (if any), the Contractor will monitor the borrower's post-petition loan account. In the event of a default by the borrower on a reaffirmed loan, the Contractor must notify the City and await instructions on to how to proceed.

4. Standard Terms and Conditions

4.1. 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.

4.2. 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 Contractor 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.

4.3. Continuation During Disputes

- A. Contractor 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.
- B. 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.

4.4. 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.

4.5. Audit/Records

- A. The City reserves the right, at reasonable times, to audit Contractor's books and records relative to the performance of service under this Agreement. All records pertaining to this Agreement will be kept on a generally accepted accounting basis for a period of five years following termination of the Agreement.
- B. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

4.6. Independent Contractor Status; Employment Disclaimer

- A. The parties agree that Contractor 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 independent contractors. Neither Contractor nor any of Contractor's agents, employees or helpers will be deemed to be the employee, agent, or servant of the City. The City is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Contractor.
- B. 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 will be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Contractor will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules will accrue to such individual. Contractor will 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 will save and hold harmless the City with respect thereto.

4.7. Costs and Payments

- A. Under this Agreement, the City will pay for services at a fixed or hourly bill rate of \$dollars cents (\$hourly or fixed rate USD) per hour, with no additional charges for overhead, benefits, local travel or administrative support. The total amount to be remitted by the City to Consultant for all Services satisfactorily performed under this Agreement shall not exceed WRITE OUT THE AMOUNT Dollars USD (\$NUMBER AMOUNT USD) per year including reasonable and necessary travel expenses (if such travel expenses are approved in advance by the City and included in the Fee Schedule (Exhibit D)). Payments shall be made in proportion to the Services performed and no more than ninety percent (90%) of the total contract price shall be paid before the work is totally completed and accepted by the City.
- B. City will pay any sales or use taxes resulting from this Agreement. Consultant shall be solely responsible for payment of taxes based on Consultant's income. Consultant

agrees that on all billings, invoices, books and records relating to this Agreement, Consultant will state the charges imposed for the sale, transfer and licensing of tangible personal property separately from charges imposed for professional, personal and technological services including, but not limited to, software installation, modification, training, consulting and technical telephone support.

- C. **Invoices.** Consultant shall submit invoices in arrears, on every other week basis. Each invoice will clearly note any Purchase Order number and be accompanied with itemized receipts which include approved timesheets. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation supporting the charges reflected in the invoice will be provided with the invoice. Upon finding of an error and/or missing documentation, the City may return the invoice to the Consultant. Consultant will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Oversight by the City in identifying an error does not result in waiver of any of the City's rights. All properly submitted invoices will be paid promptly after the City's receipt of the invoice.
- D. **Commencement of Work.** The Consultant is cautioned not to commence any billable work or provide any material or service under this Agreement until Consultant receives a fully executed contract document or otherwise directed to do so, in writing by the City.
- E. **Late Submission of Claim by Contactor.** The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
- F. **No Advance Payments.** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.
- G. **Fund appropriation Contingency.** The Consultant recognizes that this Agreement shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Consultant and the City herein recognize that the continuation of any Agreement after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix 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.
- H. **IRS W9 Form.** In order to receive payment, the Consultant shall have a current IRS W-9 form on file with the City of Phoenix. The form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

4.8. Contract Changes

- A. **Contract Amendments:** Whenever an addition, deletion or alteration to the Services described in EXHIBIT A – SCOPE OF WORK substantially changes the Scope of Work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the City and Contractor before such addition, deletion or alteration will be performed. Changes to the Services may be made and the compensation to be paid to Contractor may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by Contractor will be allowed except as provided herein, nor will Contractor do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Contractor without prior written authorization will be at Contractor's risk, cost and expense, and Contractor agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.
- B. **Non-Assignability:** This Agreement is in the nature of a personal services contract and Consultant shall have no power to assign this Agreement, including any right, duty, or obligation of Consultant under this Agreement, without the prior written consent of the City. Consultant shall not subcontract with any third party for any component of the Services without the prior written consent of the City. Any attempt to assign or subcontract without the City's prior written consent shall be void. An essential consideration provided to the City by Consultant to induce the City to enter into the Agreement is Consultant's representation that the individual(s) performing services shall include Consultant's principals as selected through the Qualified Vendor solicitation process. Therefore, should such named individual(s) sever their relationship with Consultant, or otherwise be unavailable to carry out Consultant's duties under this Agreement for a period of time deemed to be excessive by the City in its sole and absolute discretion, then the City may, without notice, immediately terminate this Agreement for cause.
- 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.

4.9. 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.

4.10. 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 Solicitation 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.

4.11. 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. Immediately upon receiving a written notice to terminate or suspend Services, Contractor will:
 - Discontinue advancing the work in progress, or such part that is described in the notice.
 - Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
 - Appraise the work it has completed and submit its appraisal to the City for evaluation.
 - Be paid in full the pro rata value for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.
3. 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:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
 - In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
 - 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;
 - Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
 - In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.
- C. **Final Payment:** The City shall make final payment for all Services performed and accepted within sixty (60) days after Consultant has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement.
- D. **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 such additional expense is 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.
- E. **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.

4.12. Notice

Any notice, consent or other communication ("Notice") required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

If to Contractor: TBD

If to City: TBD

4.13. Conflicts of Interest

- A. Contractor 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.

- B. The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.
- C. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, 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 Contractor, terminate the right of Contractor 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 Contractor as could be pursued in the event of default by Contractor.
- D. This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

4.14. Waiver of Claims for Anticipated Profits

Contractor waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

4.15. 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 Contractor 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>. 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.

4.16. 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.

4.17. 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.

4.18. 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.

4.19. 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.

4.20. 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.

4.21. 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.

4.22. 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.

4.23. Claims or Demands Against the City

- A. Contractor 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 Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. 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.
- B. 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).

4.24. No Third-Party Beneficiaries

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.

5. Special Terms and Conditions

5.1. Term of Contract

The term of this Contract will commence on or about May 1, 2024 and will continue for a period of five (5) years thereafter.

5.2. Price

All prices submitted shall be firm and fixed for the initial one-year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 60 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

The City will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Chief Procurement Officer are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Chief Procurement Officer.

5.3. Method of Ordering

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

5.4. Method of Invoicing

Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number
- Unit price, extended and totaled
- Quantity ordered, back ordered, and shipped
- Applicable tax
- Invoice number and date
- Delivery address
- Payment terms
- FOB terms
- Remit to address

5.5. Method of Payment

Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.

5.6. Partial Payments

Partial payments are not authorized on individual purchase orders. Payment will be made upon final delivery and acceptance of all goods and services on the purchase order.

5.7. Supplier Profile Changes

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

5.8. Estimated Quantities or Dollar Amounts (Requirements Contracts Only)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

5.9. Suspensions of Work

The City reserves the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

5.10. Hours of Work

All work under this contract shall be coordinated with the City's authorized Department representative. Any changes to the established schedule must have prior written approval by the City's authorized Department representative.

5.11. Performance Interference

Contractor shall notify the City's authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

5.12. Cooperative Agreement

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

5.13. Exclusive Possession

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

5.14. Licenses and Permits

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

5.15. Miscellaneous Fees

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided.

Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from “check-in” to “check-out” at the worksite.

5.16. Contacts with Third Parties

- A. Contractor or its subcontractors 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 Contractor or its subcontractors 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, Contractor or its subcontractors 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 Contractor and its subcontractors under this Section will survive the termination of this Agreement.
- B. Contractor agrees that the requirements of this Section will be incorporated into all subcontractor agreements entered into by the Contractor. 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.

5.17. SBE / DBE Utilization

The City extends to each individual, firm, vendor, supplier, contractor and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

5.18. Fiscal Year Clause

The City’s fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of 60 days immediately following the close of the fiscal year, under the provisions of Arizona Revised Statutes §42-17108. Therefore, Contractor must submit billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

5.19. Final Payment

- A. **PAYMENT:** The City will make final payment for all Services performed and accepted within 60 days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Contractor will be at the City's sole risk for such use.
- B. **TEMPORARY SUSPENSION:** The City may, by written notice, direct Contractor 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 Contractor in performance, and not due to fault or negligence of Contractor, 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 Contractor for a price adjustment must be supported by appropriate documentation asserted promptly after Contractor has been notified to suspend performance.

5.20. Professional Competency

- A. **QUALIFICATIONS:** Contractor represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.
- B. **LEVEL OF CARE AND SKILL:** Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Contractor's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

5.21. Specific Performance

Contractor agrees that in the event of a breach by Contractor 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 Contractor 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.

5.22. Documentation

- A. **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, Contractor 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 Contractor pending the resolution of the existing or anticipated litigation.

- B. **FORMAT AND QUALITY:** All documents prepared by Contractor will be prepared in a format and at a quality approved by the City.
- C. **DOCUMENT REVIEW:** Contractor 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.
- D. **SUBMITTALS:** Contractor will provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as such become available to the City for review.

5.23. Public Records

- A. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Contractor acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Contractor understands that disclosure of some or all of the items subject to this Agreement may be required by law.
- B. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, the City agrees to provide the Contractor with notice of that request, which shall be deemed given when deposited by the City with the USPS for regular delivery to the address of the Contractor specified in their proposal. Within ten days of City notice by the City, the Contractor will inform the City in writing of any objection by the Contractor to the disclosure of the requested information. Failure by the Contractor to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.
- C. In the event the Contractor objects to disclosure within the time specified, the Contractor agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Contractor does not object thereto. Furthermore, the Contractor 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.

5.24. Communication in English

It is mandatory that the Contractor's lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

5.25. Contractor Assignments

The Contractor hereby agrees that any of its employees who may be assigned to a City site to satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this contract and shall perform no work at other City facilities. If other services, in addition to or separate from, the services specified herein, may be deemed necessary by the Chief Procurement Officer or his authorized representative, the Contractor may be requested to perform the additional or special service.

5.26. Transition of Contract

Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this contract.

5.27. 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.

5.28. 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.

5.29. 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.

5.30. 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.

5.31. 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.

5.32. 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.

5.33. Background Screening – Maximum Risk

- A. **Determined Risk Level:** The current risk level and background screening required is MAXIMUM RISK.
- B. **Maximum Risk Level:** A maximum risk background screening will be performed every **five** years when the Contract Worker's work assignment will:
 1. work directly with vulnerable adults or children, (under age 18); or
 2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
 3. unescorted access to:
 - a. City data centers, money rooms, high-value equipment rooms; or
 - b. unescorted access to private residences; or
 - c. access to critical infrastructure sites/facilities; or

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

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

5.34. Additional Maximum Risk Background Checks

Maximum screening will additionally require:

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

5.35. Maximum Risk Background Criminal Justice Information Services (CJIS) Check Must Include

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

5.36. Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,

- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- G. 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.
- H. 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.
- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- M. For any childcare or health worker positions, or Criminal Justice Information Systems access in the scope of work, Contractor is required to send the City updated background checks every three years.
- N. The Contractor will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Contractor is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Contractor grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.

- O. The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the City's authorized Department representative at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the City's authorized Department representative. The City's authorized Department representative will conduct the security check.
- P. The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:
1. Conviction of a felony.
 2. Conviction of a misdemeanor (not including traffic or parking violation).
 3. Any outstanding warrants (including traffic and parking violations).
 4. A person currently on parole or probation.
 5. A person currently involved in an investigation.

5.37. Security Inquiries

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

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

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and

- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

5.38. Accommodations

- A. A workstation will be provided for Consultant at 200 W. Washington Street, 251 W Washington Street or 149 North 4th Avenue, Phoenix, AZ 85003. A personal computer will be provided for access to select documentation provided by City staff and for storage of documentation developed in conjunction with the services being provided. The personal computer and all accessed data and information remain the exclusive property of City. In the event that mobile devices such as a laptop, blackberry, etc. are required to provide Services, City will provide these items to Consultant subject to City of Phoenix rules and regulations associated with the use of these items including, but not limited to, acceptable use, personal use restrictions, and financial responsibility in the event the item is lost or stolen. Should Consultant elect to provide their own mobile devices capable of meeting the requirements necessary to perform the Services, Consultant may do so with the approval of PROJECT MANAGER NAME (the "Project Manager").
- B. Parking accommodations, including the cost thereof, shall be borne by Consultant.
- C. Badge and key fees as specified in Section 18.6 of this Agreement shall be borne by Consultant.

6. Federal Contract Clauses - Housing HUD Specific

6.1. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Disadvantaged Business Enterprises

Pursuant to national and City policy to award a fair share of contracts to small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises, Contractor shall take affirmative steps to assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services. Such affirmative steps shall include the following:

- A. Include qualified small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises on solicitation lists.
- B. Assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are solicited whenever they are potential sources.
- C. When economically feasible, divide total requirements into small tasks or quantities so as to permit maximum participation from small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- D. Where the requirement permits, establish delivery schedules which encourage participation by small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce and the Community Services Administration as required.
- F. Comply with the applicable requirements of the Small and Disadvantaged Business Enterprise Policy Plan for the City of Phoenix.
- G. Include affirmative steps, one through six in any subcontract.

6.2. Debarment and Suspension (Executive Orders 12549 and 12689)

in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension," Contractor agrees that neither it, nor its principals is presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Contract by any federal department, and agrees to comply with the requirements of 2 CFR 180 and **24 CFR 2424**.

6.3. Access to Records

The CITY, **FEDERAL AGENCY**, the Comptroller General of the United States, the Government Accounting Office or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are pertinent to any activity performed under this Contract as required under 2 CFR 200.333 et seq. and **24 CFR**

570.502(7)(ii) for the purpose of making audit, examination, excerpts and transcriptions. The Contractor shall keep and maintain such books, documents, papers and records in accordance with 2 CFR 200.333 et seq. and for a period of at least three (3) years after the expiration or termination of this Agreement **or three (3) years after the submission of the annual performance and evaluation report as prescribed in 24 CFR 91.520**. The Contractor shall permit independent auditors access to its records and financial statements as necessary to comply with federal audit requirements.

6.4. Termination for Cause and for Convenience

- A. The CITY may terminate this contract in whole, or from time to time in part, for the CITY's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The CITY shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the CITY all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.
- B. If the termination is for the convenience of the CITY, the CITY shall be liable only for payment for services rendered before the effective date of the termination.
- C. If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the CITY may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the CITY, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by the CITY; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the CITY by the Contractor. In the event of termination for cause/default, the CITY shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

6.5. Byrd Anti-Lobbying Certification (31 U.S.C. 1351)

In all contracts in excess of \$100,000 the Contractor hereby certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.

- B. Each Contractor tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization or influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C, 1352.
- C. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. Such disclosures are forwarded from tier to tier up to the non-Federal award.

6.6. Clean Air Act and Federal Water Pollution Control Act

6.7. Procurement of Recovered Materials

- A. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable time period; (2) fail to meet reasonable performance standards, which shall be determined the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item, or (3) are only available at an unreasonable price.
- B. Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

6.8. Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

- A. This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

- B. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- C. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

6.9. Audit

The Contractor shall submit a financial audit within ninety (90) days after the close of any Contractor fiscal year in which the aggregate of federal grant funds expended from all sources both inclusive and exclusive of this agreement is Seven Hundred-Fifty Thousand Dollars (\$750,000) or more. The audit shall be in conformance with the audit requirements of 2 CFR Part 200.501. No funds resulting from this Contract shall be expended for the purpose of an audit without the prior written consent of the City. The decision to provide such consent shall be in the sole discretion of the City.

6.10. Conflicts of Interest

All parties hereto agree to abide by the provisions of 2 C.F.R. 200.318, which include (but are not limited to) the following:

- A. The Contractor shall maintain a written code or standards or conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
- B. No employee, officer, or agent of the Contractor shall participate in the selection, or in the award, or administration of, a contact supported by federal funds if a conflict of interest, real or apparent would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- C. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.

6.11. Drug-Free Workplace Act of 1988

The Contractor must comply with drug-free workplace requirements in Subpart B of 2 CFR § 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

6.12. HUD Form 5370-C, Section 2

All Proposers should review the provisions in HUD Form 5370C, Section 2, incorporated herein by reference and is incorporated in the Contract between the successful Proposer and the City of Phoenix.

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5370-C2.pdf>

6.13. HUD Form 4010

All Proposers should carefully review HUD Form 4010, incorporated herein by reference and is incorporated in the Contract between the successful Proposer and the City of Phoenix.

<http://portal.hud.gov/portal/documents/huddoc?id=4010.pdf>

6.14. HUD Table 5.1

All Proposers should carefully review HUD Table 5.1, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5370 refers to the City of Phoenix.

<https://www.hud.gov/sites/documents/74608C05PIHH.pdf>

6.15. Federal Funding Accountability and Transparency Act (FFATA)

The AGENCY will comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The AGENCY must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and have a Unique Entity Identifier (UEI). The AGENCY will also comply with the provisions of FFATA which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

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 (“Indemnatee”) 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 Indemnatee 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 Indemnatee accrues immediately at the time a claim is threatened or a claim is made against Indemnatee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnatee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnatee’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 Indemnatee 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.

7.2. Professional Services

Consultant (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnatee”) 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 Indemnatee 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 Indemnatee accrues immediately at the time a claim is threatened or a claim is made against Indemnatee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnatee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnatee’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 agrees to waive all rights of subrogation against Indemnatee for losses

arising from or related to any 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.

8. Insurance Requirements

8.1. Financial Consultant's Insurance

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

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

8.4. 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 Financial Consultant is exempt under A.R.S. §23-902(E), **AND** when such Financial Consultant executes the appropriate sole proprietor waiver form.

8.5. 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.

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Financial 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 (2) years beginning at the time work under this Contract is completed.

8.6. Financial Institution Bond or Security Dealers Blanket Bond

(see Investment Advisor intro section to determine need for bond)

8.7. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Financial Consultant 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 City of Phoenix Housing Department, Management Services Division, 251 W. Washington Street 4th Floor, Phoenix, AZ 85003 or hou.procurement@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 Financial Consultant from potential insurer insolvency.

8.9. Verification of Coverage

Financial Consultant 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 City of Phoenix Housing Department, Management Services Division, 251 W. Washington Street 4th Floor, Phoenix, AZ 85003 or hou.procurement@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. 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 original, NA copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the 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 NA 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 written 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
- A. Offeror's Proposal - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation.
- B. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
- C. Submittal Forms - All submittal forms are completed and signed.
- D. Addenda - Signed copies of all published addenda.

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.

10. Copy of Submittals

10.1. Copies

Please submit one original, NA copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the 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 NA calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

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- Submitted with contact information for the individual(s) authorized to negotiate with the City
- A. Offeror's Proposal - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation and evaluation criteria.
- B. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
- C. Submittal Forms - All submittal forms are completed and signed.
- D. Addenda - Signed copies of all published addenda.

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COSTS AND PAYMENTS

(please complete and return with the submittal)

PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City **will default to 0% - net 45 days:**

____ Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

____ Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY
AND VOLUNTARY EXCLUSION**

(please sign and return with the submittal)

The prospective participant (Contractor for a federally funded project) certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Where the prospective participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this solicitation.

THE PARTICIPANT (Contractor for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

Authorized Official Name

Signature

Title of Authorized Official

Date

CONTRACTOR LICENSING REQUIREMENTS

(please complete and return with the submittal)

Offeror shall comply with all statutes and rules of the State of Arizona and the Registrar of Contractors. In accordance with A.R.S. § 32-1151, and unless otherwise exempted by A.R.S. § 32-1121, Offeror shall have the correct class of license as required by the Registrar of Contractors for the work specified, at the time of offer submission.

Offeror certifies possession of the following license:

Licensed Contractor's Name _____

Class _____

License Number. _____

Expiration Date _____

YEARS IN BUSINESS AND REFERENCES

(please complete and return with the submittal)

Contractor certifies that they have provided Loan Services listed in this solicitation for a period of 3 years.

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three firms or government organizations for which the Contractor is currently furnishing or has furnished, the goods or services.

Name of Company: _____

Name of Contact: _____

Email Address: _____

Phone Number: _____

Name of Company: _____

Name of Contact: _____

Email Address: _____

Phone Number: _____

Name of Company: _____

Name of Contact: _____

Email Address: _____

Phone Number: _____



PRICING PROPOSAL
RFQ FY24-086-09 Loan Services

Item **Loan Portfolio Management** **Cost**

I Amortized Loans

1	New Loan Set-Up Fee	\$	
2	Monthly Servicing for Amortized Loans with escrow or impounding (per loan)	\$	
3	Monthly Servicing for Amortized Loans with no escrow or impounding (per loan)	\$	

II Deferred Loans

1	New Loan Set-Up Fee	\$	
2	Monthly Warehousing Fee for Deferred Loans with no escrow or impounding (per loan)	\$	
3	Fee for receiving occasional payments on deferred loans (per loan)	\$	
4	Monthly Warehousing Fee for Deferred Loans with escrow or impounding (per loan)	\$	

III Surplus Cash Flow Loans

1	New Loan Set-Up Fee	\$	
2	Monthly Servicing for Surplus Cash Flow Loans requiring annual or semi-annual payments, when payment is received, with no escrow or impounding required (per loan)	\$	
3	Monthly Servicing for Surplus Cash Flow Loans requiring annual or semi-annual payments, when no payment is received when due, with no escrow or impounding required (per loan)	\$	

IV Compound Interest Rate Loans

1	New Loan Set-Up Fee	\$	
2	Monthly Servicing for Compound Interest Rate Loans requiring monthly payments and compounding of interest when payment is received, no escrow or impounding required (per loan)	\$	
3	Monthly Servicing for Compound Interest Rate Loans requiring monthly payments and compounding of interest, when no payment is received when due, no escrow or impounding required (per loan)	\$	

V Financial Statement Review (at City's Request)

1	Initial Annual Financial Statement Review regardless of the number of Promissory Notes	\$	
2	Subsequent Annual Financial Statement Review (applicable when more than one financial statement on the same loan is submitted for review at the same time)	\$	

VI Delinquency and Default Management

1	Monthly fee for non-deferred loans, if not already included in fees stated above.	\$	
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PRICING PROPOSAL
RFQ FY24-086-09 Loan Services

Item **Loan Portfolio Management** **Cost**

VII Forbearance Plans

1	Fee to develop and execute forbearance plan of less than six (6) months	\$	
2	Fee to develop and execute forbearance plan of more than six (6) months (will require City's approval)	\$	

VIII Per Event Fees

1	Affidavit of Ownership (at City's request) per loan	\$	
2	Affidavit of Ownership (at City's request) entire portfolio done at one time	\$	
3	Portfolio Transfer Fee (per loan)	\$	
4	Loan Foreclosure Fee	\$	

IX Bankruptcy Monitoring Services

1	Monthly fee for bankruptcy monitoring and payment processing (at City's request) per loan per month	\$	
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OFFER

(please complete, sign, and return with the submittal)

TO THE CITY OF PHOENIX - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of a solicitation.

Arizona Sales Tax No. _____
 Use Tax No. for Out-of-State Suppliers _____
 City of Phoenix Sales Tax No. _____
 Arizona Corporation Commission File No. _____

Taxpayer's Federal Identification No.: If recommended for contract award, Offeror agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the Offeror provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

<p>Enter City's Registration System ID Number Located at City's eProcurement website (see SECTION 2 – INSTRUCTIONS - CITY'S REGISTRATION)</p>	
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Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

 Authorized Signature

 Date

 Print Name and Title
(President, Manager, Member)

 Offeror Legal Name and Company Type
(LLC, Inc., Sole Proprietor)

Street Address: _____
 City, State, Zip Code: _____
 Telephone Number: _____
 Email Address: _____

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No. _____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX

A Municipal Corporation
Jeffrey Barton, City Manager

Director or delegate:

Title:

Department:

Attest:

_____ this ____ day of _____ 2024

City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.