



City of Phoenix

RFP MSD-24-0319  
FISCAL MONITORING SERVICES

City of Phoenix  
Human Services  
200 W. Washington St. 18th Floor  
Phoenix, AZ  
85003

RELEASE DATE: April 24, 2024  
DEADLINE FOR QUESTIONS: May 10, 2024  
RESPONSE DEADLINE: May 30, 2024, 3:00 pm

City of Phoenix  
REQUEST FOR PROPOSAL  
RFP MSD-24-0319  
Fiscal Monitoring Services

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Attachments:

- A - Submittals - References rev 2-2023
- B - Submittals - 24 Hour Emergency Contact rev 2-2023.
- C - Submittals - Conflict of Interest and Transparency rev 2-2023
- D - Submittals - Costs and Payments rev 2-2023
- E - Submittals - Contractor Licensing Requirements rev 2-2023
- F - Submittals - Debarment & Exclusion rev 2-2023
- G – Submittals – Ability to Obtain Ins
- H – Submittals – Confidential Information Form
- I - Submittals - Offer Page rev 3-2023
- J - Submittals - Place of Business rev 2-2023

K – Submittals – Authority to Sign Documents

L – Affidavit of Lawful Presence

M – Submittal Affidavit

N – Submittals – Financial Responsibility Questionnaire

T – Submittals - Pricing Proposal Template

# 1. INSTRUCTIONS

## 1.1. Introduction

### 1.1.1. Summary

The City of Phoenix Human Services Department (HSD) is seeking fiscal monitoring services for a variety of programs.

### 1.1.2. Contact Information

**Nancy Harrison**

Contracts Specialist II Lead

Email: [hsdprocurement@phoenix.gov](mailto:hsdprocurement@phoenix.gov)

Phone:

**Department:**

Human Services

### 1.1.3. Timeline

<b>Release Project Date</b>	April 26, 2024
<b>Question Submission Deadline</b>	May 10, 2024, 3:00pm
<b>Question Response Deadline</b>	May 15, 2024, 3:00pm
<b>Proposal Submission Deadline</b>	May 30, 2024, 3:00pm

## 1.2. Description – Statement of Need

The City of Phoenix invites sealed offers for fiscal monitoring services for a variety of programs for a one year contract with four, one year, options to renew commencing on or about September 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 termination pursuant to the provisions of this Agreement.

### 1.3. Minimum Qualifications

The qualified and responsive Offeror must meet **all** minimum qualifications listed below. Should an Offeror fail to meet one of the minimum qualifications identified, the Offer will be disqualified as non-responsive.

#### **Enter Minimum Qualifications**

Each proposer must have 5 years experience providing fiscal monitoring services to at least one non-profit or government agency. Each proposer must designate a lead Certified Public Accountant (CPA) in its proposal. Each proposer's lead CPA and any other proposed staff must each have 5 years individual experience providing fiscal monitoring services.

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

### 1.4. Agreement Term and Contractual Relationship

Offerors are responsible for reading the agreement and submitting any questions about it in accordance with the process listed in this agreement. By submitting a proposal, each Offeror agrees it will be bound by the agreement. The City anticipates a one year contract with four, one year, options to renew. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence of any of the following:

- reaching the end of the term and any extensions;
- completing the services set forth in the Scope of Work (the "Services");
- payment of the maximum authorized compensation; or
- termination pursuant to the provisions of the Agreement.

### 1.5. Scope of Work and Special Terms and Conditions

Contractor will provide consulting services that will be in accordance with the Scope of Work as set forth in Scope of Work section, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these services, Contractor will also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in Special Terms and Conditions section. Contractor will provide progress reports to the City of Phoenix Project Manager, or "the City" per a mutually agreed-upon schedule.

### 1.6. 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.

## 1.7. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

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

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

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

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

## 1.8. Exception

Offerors must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions will be deemed non-responsive and disqualified from further consideration. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to ask the Procurement Officer questions rather than including exception in their Offer.

## 1.9. Inquiries

All questions that arise relating to this solicitation should be submitted in writing by email to the Procurement Officer and must be received by the due date indicated in the Timeline. The City will not consider questions received after the deadline.

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

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

### 1.10. Addenda

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

### 1.11. Licenses

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

### 1.12. Certifications

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

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

### 1.13. Submission of Offer

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. The prevailing clock will be the City Department's clock.

Offers must be submitted in one of the following ways:

1. Submitted electronically by email to [hsdprocurement@phoenix.gov](mailto:hsdprocurement@phoenix.gov) and the following information should be noted in the email:
  - a. Offeror's Name
  - b. Offeror's Address (as shown on the Certification Page)
  - c. Solicitation Number
  - d. Solicitation Title



- e. Offer Opening Date
- f. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any Offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.
- g. Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.

#### 1.14. Withdrawal of Offer

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

#### 1.15. Offer Results

Offers will be opened on the Offer due date, time and location indicated in the Timeline, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary Offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five business days of the Offer opening. The City will post the information on the preliminary tabulation as it was read during the Offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the Offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

## 1.16. Pre-Award Qualifications

Offeror must have been in operation a minimum of NO VALUE years. The Offeror's normal business activity during the past NO VALUE years will have been for providing the goods or services in this solicitation.

Upon notification of an intent to award, the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this agreement. Insurance requirements are non-negotiable.

## 1.17. Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

- A. Factors that may be considered by the City include:
  - 1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
  - 2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
  - 3. Safety record; and,
  - 4. Offeror history of complaints and termination for convenience or cause.
- B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all Offers or portions thereof; or (3) reissue a solicitation.
- C. A response to a solicitation is an Offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. **A contract has its inception in the award, eliminating a formal signing of a separate contract.** For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

## 1.18. 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 Offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an Offer 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.

## 1.19. Solicitation Transparency Policy

- A. Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all Offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.
- B. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- C. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- D. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- E. "To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all Offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

## 1.20. Protest Process

- A. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- B. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an Offer, regardless of filing a protest.
- C. Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- D. Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.
- E. All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
  - 1. Identification of the solicitation number;
  - 2. The name, address and telephone number of the protester;
  - 3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
  - 4. The form of relief requested; and
  - 5. The signature of the protester or its authorized representative.
- F. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43), and administrative regulations and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

## 1.21. Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an

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

## 1.22. Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being a late Offer.

## 1.23. Right to Disqualify

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

## 1.24. Contract Award

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

## 1.25. Equal Low Offer

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied Offers. If time permits, the Offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.

The evaluation panel will review the information submitted in the proposals. All responsive and responsible proposals will be evaluated based on the following criteria. This is a best-value-to-the-City procurement, which means the evaluation panel will look at all factors, not just the proposed budget, in selecting the recommended proposer.

1. Proposed Lead CPA's and Assigned Staff's Qualifications and Experience (0-300 points)
  - Number of years and type of the proposed CPA has providing fiscal monitoring services
  - Number of years and type of experience the proposed assigned staff has providing fiscal monitoring services
2. Fees (0-275 points)
  - Hourly Rate
3. Proposer's Qualifications and Experience (0-225 points)
  - Number of years and type of experience providing fiscal monitoring services
  - Number of years and type of experience providing fiscal monitoring services to non-profits or government agencies
4. Approach to Scope of Work (0-200 points)
  - Proposed approach to scope of work

## 1.26. Evaluation of Competitive Sealed Offers

The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

## 1.27. Determining Responsiveness and Responsibility

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

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

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

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

The Procurement Officer, in consultation with legal counsel will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

## 1.28. Detailed Evaluation of Offers and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

## 1.29. Offers Not Within the Competitive Range

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

## 1.30. Discussions with Offerors in the Competitive Range

The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

**Demonstrations** - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

### 1.31. Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.

If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

### 1.32. Fixed Offer Price Period

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

### 1.33. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Human Services Department, 200 W. Washington Street, 18th



Floor, Phoenix, AZ 85003. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

### 1.34. Business in Arizona

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with the City.

### 1.35. Evaluation Criteria

In accordance with the Administrative Regulation 3.10. Competitive Sealed Proposal awards shall be made to the responsive and responsible Offeror(s) whose Offer is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance and more details are provided in Scope of Work. The following evaluation criteria will be used to evaluate all Offers:

All responsive and responsible proposals will be evaluated based on the following criteria.

#### **1. Proposed Lead CPA's and Assigned Staff's Qualifications and Experience - 275 points**

- Number of years and type of the proposed CPA has providing fiscal monitoring services.
- Number of years and type of experience the proposed assigned staff has providing fiscal monitoring service.
- Provide an oranzizational chart.
- How experienced is your audit team?

#### **2. Fees -200 points**

- Hourly Rates

#### **3. Proposer's Qualifications and Experience -250 points**

- Number of years and type of experience providing fiscal monitoring services.
- Number of years and type of experience providing fiscal monitoring services to non-profits or government agencies.

#### **4. Approach to Scope of Work - 275 points**

- Proposed approach to scope of work.
- Provide the title, reusme and fee schedule for the staff assigned to this project.
- How many satff will be dedicated to this project?

- Can your time tracking system allocate staff hours between the programs monitored?
- Does your accounting system allow for submitting monthly invoices with backup documentation allocating staff hours between the monitored programs?
- What application or drop box system do you use for document gathering?
- What is the process for tracking your workflow? Please provide a detailed example.
- Please explain your fieldwork process.
- How do you handle emerging issues in auditing?
- What is your strategy to handle emerging issues in auditing?
- How will you communicate findings and issues discovered during an audit?

## EXHIBIT C - EVALUATION AND SCORING CRITERIA

### EVALUATION CRITERIA

- I. In accordance with Administrative Regulation 3.10, Qualifications Based Selections, contracts will be awarded to the most highly qualified and responsible offerors, taking into consideration the evaluation criteria set forth in the request for qualifications. The evaluation criteria are listed below along with the possible points assigned to each. Additional information for each criterion is provided below.

<b>ID</b>	<b>Evaluation Criteria</b>	<b>Points</b>
1	Lead CPA and Assigned Staff Qualifications	275
2	Fees	200
3	Proposer's Qualifications and Experience	250
4	Approach to Scope of Work	275
	<b>Total Available Points</b>	<b>1000</b>

### EVALUATION RUBRIC

In accordance with Administrative Regulation 3.10, Qualifications Based Selections, contracts will be awarded to the most highly qualified and responsible offeror(s), taking into consideration the evaluation criteria set forth in the request for qualifications. The evaluation criteria are listed below along with the possible points assigned to each. The evaluation criteria sections will be evaluated in the following format:

Criteria 1: Lead CPA and Assigned Staff Qualifications	275 Points
Criteria 2: Fees	200 Points
Criteria 3: Proposer's Qualifications and Experience	250 Points
Criteria 4: Approach to Scope of Work	275 Points
<b>TOTAL AVAILABLE POINTS:</b>	<b>1,000 Points</b>

<b>Rating Definitions for Criteria 1, 3 and 4</b>		<b>% of Max Points</b>
<b>Above Expectations</b> = The Offeror's response meets all requirement(s) outlined in the RFP and exceeds what is required in some areas.		100% Points
<b>Meets Expectations</b> = The response meets the requirement(s) outlined in the RFP.		75% Points
<b>Below Expectations</b> = The response minimally addresses the requirement(s) of the RFP, but one or more major considerations of the requirement(s) is not addressed, or the experience and/or solution is so limited that it results in a low degree of confidence in the response or proposed solution.		50% Points
<b>Unacceptable</b> = The response fails to address the requirement(s) of the RFP or fails to provide any experience related to the requirement(s) of the RFP or elements of the proposal are unacceptable.		0 Points
<b>Rating Definitions for Criteria 2</b>		<b>Max Points</b>
Lowest price divided by Offeror's price multiplied by total number of points assigned to price.		200 points

## 2. AGREEMENT

### 2.1. Professional Services Agreement

**BETWEEN  
THE CITY OF PHOENIX  
AND  
CONTRACTOR NAME**

This AGREEMENT is made and entered into this September 1, 2024, (“the Effective Date”), or as of the City Clerk date, whichever is later, by and between the City of Phoenix, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as “City”) and **insert legal name of Contractor here, insert state of corporation and correct business name – Corporation, LLC, etc that you have confirmed on the Arizona Corporation Commission website**, (hereinafter referred to as “ Contractor”).

#### RECITALS

- A. The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for professional services.
- B. The City desires to obtain the services that are specifically set forth in this Agreement.
- C. The City procured these professional services in accordance with the Phoenix City Code and Administrative Regulation 3.10.
- D. Contractor possesses the skills and expertise necessary to provide such services as desired by the City.
- E. **This Agreement is authorized by the City Council (Ordinance Number and Agenda Number if applicable) Enter date.**

**NOW, THEREFORE**, it is agreed by and between the parties as follows:

### 2.2. Term of Agreement

- A. This Agreement begins on the Effective Date in the above introductory paragraph, and upon approval by the City, for one year contract with four, one year, options to renew.
- B. This Agreement will terminate upon the earliest occurrence of any of the following:
  - 1. reaching the end of the term exercised as set forth in A;
  - 2. completing the services set forth in the Scope of Work attached as EXHIBIT A – SCOPE OF WORK (the “Services”);
  - 3. payment of the maximum compensation under Paragraph Payment of this Agreement; or
  - 4. termination pursuant to the provisions of this Agreement.

## 2.3. Payment

- A. The total amount to be remitted by the City to Contractor for all Services satisfactorily performed under this Agreement will not exceed \$Enter amount per year including reasonable and necessary travel expenses, if approved in advance by the City and included in the Fee Schedule EXHIBIT B. Under this Agreement, the City will pay for Services at the rate(s) specified in the Fee Schedule and that comply with the requirements for Reimbursable Expenses as outlined below, with no additional charges for overhead, benefits, local travel or administrative support. Payments will be made in proportion to the Services performed and no more than 90% of the total contract price will be paid before the work is totally completed and accepted by the City.
- B. Contractor will submit monthly invoices on or before the Enter calendar day of every month. Each invoice will be accompanied with itemized receipts. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation will be provided that supports the charges reflected in the monthly invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to the Contractor. Contractor 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. Failure of City to identify an error does not waive any of the City's rights.
- C. Invoices will be submitted to: Enter address
- D. Contractor will demonstrate good judgment when incurring costs that are considered a Reimbursable Expense while conducting business for the City. All Reimbursable Expenses will be reasonable and prudent. Generally, Reimbursable Expenses include:
  - Business Expenses: If applicable, receipts for business expenses must be submitted with all requests for payment. Business expenses that require receipts include, but are not limited to express mail; delivery services; messenger services; and outside printing.
  - Office Expenses: If applicable, requests for reimbursement of office expenses must be submitted with a description of the task, which includes how the expense was incurred. Examples of office expenses needing documentation include, but are not limited to telephone; internal printing /copies (not to exceed 0.15 cents per page for black & white copies); postage; facsimiles (long distance charges only); and supplies.
  - Travel Expenses: If applicable, travel expenses must be approved in advance by the City and must be included in the Fee Schedule. Contractor will be held to comply with City of Phoenix Administrative Regulation 3.41 – Business, Conference and Training Travel and Related Expenses, revised January 16, 2015, as it may be amended, as to the eligible and ineligible expenses for reimbursement and required

documentation as available on the City's website and incorporated herein as if attached.

## 2.4. Scope of Work and Special Terms and Conditions

Contractor will provide consulting services that will be in accordance with the Scope of Work as set forth in EXHIBIT A – SCOPE OF WORK, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these services, Contractor will also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in EXHIBIT E. Contractor will provide progress reports to the Insert who Contractor is to provide report to, or just use “the City” according to a mutually agreed-upon schedule.

## 2.5. Exhibit A – Scope of Work

### 2.5.1. *Fiscal Monitoring Services*

#### Overview

The City manages several programs to provide essential services to its residents. The successful proposer will conduct fiscal monitoring of the City's contractors for these programs, and deliver written reports of the results of this monitoring.

The purposes of the fiscal monitoring review process are to: 1) determine whether the contractors possess the proper policies, procedures, and practices to meet the fiscal requirements of their contracts with the City, 2) confirm compliance with federal, state, and local requirements, and 3) to ensure the integrity, accuracy and completeness of the financial data presented to the City.

The Consultant will complete the fiscal monitoring process as described below for the Human Services Department (HSD) programs, including but not limited to Workforce Investment and Opportunity Act (WIOA), Head Start, Homeless Services, and Victim Services/Family Advocacy Center. The City reserves the right to add additional programs and related services to this Scope of Work as mutually agreed upon.

#### Programs

The successful proposer shall provide fiscal monitoring services for the following programs:

- WIOA – This program promotes opportunities for workers and jobseekers to improve their job and career options through an integrated job-driven public workforce system that links talent to businesses as described at [www.doleta.gov/wioa/Overview.cfm](http://www.doleta.gov/wioa/Overview.cfm).
- The Head Start Program operates comprehensive child development programs that serve children from birth to five years of age and their families described at [Office of Head Start \(OHS\) | ECLKC \(hhs.gov\)](http://Office of Head Start (OHS) | ECLKC (hhs.gov)). The City contracts for center-based Educational Services and Child Care Services for the Head Start Birth to Five Program.

- Homeless Services Contracts – The Homeless Services Division provides services to those experiencing homelessness and contracts with community-based organizations to provide emergency shelter, transitional housing, permanent supportive housing and other supportive services for homeless families and individuals.
- Victim Services /Family Advocacy Center (FAC) Contracts – The Victim Services Division includes the Phoenix FAC, which provides comprehensive services to victims of crimes, such as domestic and sexual violence, child abuse, homicide, cold case sexual assault, and other violent crimes. The FAC also provides funding for centralized screening and emergency shelter placement services; housing-based case management for survivors of human trafficking; and rental/utility deposits for victims moving into permanent housing.

For these programs, the term “subcontractor” is defined as an entity contracted by and accountable to the City to manage a WIOA program that delivers services to unemployed or underemployed Phoenix residents. The City performs periodic fiscal monitoring of these subcontractors in accordance with the [Code of Federal Regulations](#) Uniform Guidance, §200.331 (d) through (h) – Requirements for pass-through entities. The City estimates the successful proposer will spend an average of 450 hours per year conducting the required fiscal monitoring for these programs.

#### Annual Pre-Monitoring Planning Session

Prior to beginning fiscal monitoring services each year, the successful proposer shall meet with the City to develop a monitoring plan to ensure all necessary materials are reviewed during the fiscal monitoring review process. Activities to be covered during the Pre-Monitoring Planning Session are outlined below:

- A. Review each subcontractor’s program, scope, and contract requirements with the City including: identify the records to be monitored and the monitoring procedures to be followed; discuss prior year issues, and agree on the timing for gathering the records to be monitored;
- B. Review and finalize a Fiscal Monitoring Questionnaire (FMQ) to be used during the successful proposer’s review of each subcontractor’s documentation;
- C. Discuss the scope of the meetings to be held to complete each subcontractor’s review;
- D. Establish a timeline for completing all subcontractor reviews, including identifying lead times to allow subcontractor staff adequate time to respond to requests for necessary documents and other information.



### Fiscal Monitoring Review

The successful proposer shall be responsible for scheduling all meetings necessary to complete the fiscal monitoring review of each subcontractor, including an introductory meeting of the Consultant, the subcontractor, and the City's designated representative (Entrance Conference). Each Entrance Conference consists of verifying all required records are available and discussing the review schedule, the Fiscal Monitoring Questionnaire (FMQ), any changes to the subcontractor's organization, and last year's review report, including the status of any prior findings. The extent of the fiscal monitoring review process to be performed by the successful proposer will be subject to the general control and coordination of the authorized representative(s) of the City.

After the Pre-Monitoring Planning Session, the successful proposer will hold an Initial Subcontractor Meeting with each individual subcontractor.

After the Initial Subcontractor Meeting, the Consultant will participate in Subcontractor Meetings in person or virtually at the subcontractor's location to review, at a minimum, documentation and processes in the areas outlined below. The records to be monitored are subject to change based on federal or state regulations, program changes, and/or a specific subcontractor's performance.

a. Allowable costs:

- Compliance with state and federal guidelines
- Appropriate documentation for expenditures
- Compliance with costs allowed per the contract
- Expenditure patterns
- Timely and accurate reporting of expenditures
- Confirmation of approval for expenditures
- Confirmation of cost allocation

b. Financial records:

- Financial and Administrative Policies
- Subcontractor's most recent Single Audit
- Form 990 Compliance – Return of Organization Exempt from Income Tax
- Organizational Chart
- Participant Files
- Verification of Authorized Signers

- Personnel Files – I-9s, W4s, A4s, pay rate and position verification, fingerprint certifications, employee reimbursements.
- Subcontractor’s Request for Reimbursement
- Support documentation
- Verification of checks received, postings to ledger, deposit slips (verify amount and timeliness of deposits)
- Cost Allocation Plan(s)
- Disbursements (Invoices, timeliness of payments, verify whether expense is appropriate, cancelled checks, expense reports, support documentation, payment journals.
- General Ledger postings
- Compensation
- Timesheets (signed by employee and properly authorized), hours and rate verification, payroll journal/register, labor distribution reports, paychecks/electronic payments, general ledger postings, fringe benefits
- Bank statements and reconciliations, cancelled checks, outstanding checks (how long before they are cancelled, to whom issued), verify checks are signed by authorized persons.

At the conclusion of all the Subcontractor Meetings for each subcontractor, the successful proposer, along with the authorized representative(s) from the City, will meet with the subcontractor to conduct an Exit Subcontractor Meeting to address any potential observations or findings uncovered during the review process prior to finalizing the Fiscal Monitoring Report for the particular subcontractor.

#### Fiscal Monitoring Report

After conducting the Exit Subcontractor Meeting with each subcontractor, the successful proposer will prepare a Fiscal Monitoring Report of each subcontractor’s documentation and processes, as described in the Fiscal Monitoring Review section above. For each subcontractor, the successful proposer will provide the City with a hard copy of the Fiscal Monitoring Report in a 3-ring binder and/or an electronic copy in PDF format on a flash-drive to include the following items as applicable:

- Monitoring Notification Letter
- Fiscal Monitoring Questionnaire (FMQ)
- Fiscal Monitoring Procedures
- Expense Report/General Ledger

- Work papers
- Prior year reports
- Permanent Documents

In addition to the above sections, the Fiscal Monitoring Report must identify any internal control observations/findings and recommendations to correct any deficiencies. If material weaknesses are noted, the report must highlight those weaknesses and provide appropriate recommendations to the City.

#### Conflicts of Interest

To avoid any conflict of interest or the appearance of any such conflict and upon entering an agreement resulting from this RFP, the successful proposer will be prohibited from providing any services to any of the contractors listed below that are subject to fiscal monitoring.

The following contractors are subject to fiscal monitoring under this contract:

- Alhambra School District
- Arizona Coalition to End Sexual and Domestic Violence (ACESDV)
- Arizona Immigrant and Refugee Services
- A. T. Still University
- AZ Career Pathways
- A New Leaf
- Booker T. Washington School
- Catholic Charities
- Central Arizona Shelter Services (CASS)
- Chicanos Por La Causa (CPLC)
- Child Crisis
- Child Help
- Chrysalis
- Community Bridges, Inc.
- Deer Valley Unified School District
- Fowler School District
- Greater Phoenix Urban League
- Jewish Family and Children's Services (JFCS)
- International Rescue Committee (IRC)

- Keys To Change (HSC)
- Lutheran Social Services
- MAG
- Maricopa Community College
- Mercy Care
- Neighborhood Ministries
- Phoenix Rescue Mission
- Roosevelt School District
- Salvation Army
- St. Vincent De Paul]
- St. Joseph the Worker
- Southwest Behavioral Health
- Southwest Center for HIV and Aids
- US Vets
- United Methodist Outreach Ministries (UMOM)
- Washington School District
- YMCA

## 2.6. Submittal T – Price Proposal Template

### PROPOSED HOURLY RATES

Name of proposer: \_\_\_\_\_

Each proposer must submit an all-inclusive hourly rate for the Lead CPA and all other staff positions performing work under this agreement.

The City shall not be responsible for any proposer errors or omissions. The successful proposer shall be contractually bound to the hourly rate(s) listed below. No other expenses or fees will be reimbursed unless expressly provided in Attachment C.

Hourly rate for Lead  
CPA: \$ \_\_\_\_\_

Hourly rate for additional positions: \$ \_\_\_\_\_

Hourly rate for additional positions: \$ \_\_\_\_\_

Hourly rate for additional positions: \$ \_\_\_\_\_

Hourly rate for additional positions: \$ \_\_\_\_\_

**Add lines and staff positions as necessary.**

**ONLY THE LEAD CPA'S HOURLY RATE WILL BE EVALUATED.**

## 2.7. Standard Terms and Conditions

### 2.7.1. *Definition of Key Words Used in the Solicitation*

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

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

**May:** Indicates something that is not mandatory but permissible.

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

“A.R.S.” Arizona Revised Statute

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

“City” The City of Phoenix

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

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

“Days” Means calendar days unless otherwise specified.

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

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

“Offer” Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

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

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

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

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

### **2.7.2. Contract Interpretation**

- A. **Applicable Law:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
  - 1. Federal terms and conditions, if any
  - 2. Special terms and conditions
  - 3. Standard terms and conditions
  - 4. Amendments
  - 5. Statement or scope of work
  - 6. Specifications
  - 7. Attachments
  - 8. Exhibits
  - 9. Instructions to Contractors
  - 10. Other documents referenced or included in the Solicitation
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums

appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

- D. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- E. **Non-Waiver of Liability:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

### *2.7.3. Contract Administration and Operation*

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements 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.

#### ***2.7.4. 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.

#### ***2.7.5. 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.

#### **2.7.6. *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.

#### **2.7.7. *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>

### 2.7.8. *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.

#### *2.7.9. 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.

#### **2.7.10. 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.

#### 2.7.11. *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 Contractor 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.

#### **2.7.12. 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:

If to City:

#### **2.7.13. Integration**

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

### **2.7.14. 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.

### **2.7.15. 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.

### **2.7.16. 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.

**2.7.17. 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.

**2.7.18. 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.

**2.7.19. 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.

**2.7.20. 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.

#### **2.7.21. 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.

#### **2.7.22. 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.

#### **2.7.23. 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.

#### **2.7.24. 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).

### **2.7.25. *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.

## **2.8. Special Terms and Conditions**

### **2.8.1. *Term of Contract***

The term of this Contract will commence on or about September 1, 2024 and will continue for a period of **one (1) year**. This Contract includes **four (4) one-year options** to extend the term, for an aggregate **five (5) years**, which may be exercised by the sole discretion of the City.

### **2.8.2. *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.

### **2.8.3. *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.

### **2.8.4. *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.

#### ***2.8.5. 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.

#### ***2.8.6. 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.

#### ***2.8.7. 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.

### **2.8.8. 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.

### **2.8.9. 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.

**2.8.10. *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.

**2.8.11. *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.

**2.8.12. *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.

**2.8.13. *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.

**2.8.14. *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.

### 2.8.15. *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.

### 2.8.16. *Background Screening – Standard Risk*

- A. **Determined Risk Level:** The current risk level and background screening required is STANDARD RISK LEVEL
- B. **Standard Risk Level:** A standard risk background screening will be performed when the Contract Worker’s work assignment will:
  - 1. require a badge or key for access to City facilities; or
  - 2. allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
  - 3. allow unescorted access to City facilities during normal and non-business hours.
- C. **Requirements:** The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire.
- D. **Contractor Certification; City Approval of Background Screening:** Unless otherwise provided for in the Scope, Contractor will be responsible for:
  - 1. determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
  - 2. for reviewing the results of the background check every five years; and,
  - 3. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
  - 4. Submitting the list of qualified Contract Workers to the contracting department.

5. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
6. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

### **2.8.17. Confidentiality**

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

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

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

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

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

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

### **2.8.18. Data Protection**

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

<https://www.fpc.gov/resources/glossary/>.

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

- A. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
  1. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;
  2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as

applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)

3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;

- B. If the Contractor becomes aware of any actual or potential data breach (each an “Incident”) arising from Contractor’s processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
  2. take action immediately, at Contractor’s own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;
  3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and
  4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City’s prior written approval (except where required to do so by applicable laws).

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

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

### **2.8.19. Title**

All documents including but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analyses, studies or any other original works of authorship created by Contractor in the performance of this Agreement are to be and remain “works for hire” under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the work(s) shall belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Agreement is deemed to not be work for hire, then Contractor hereby assigns to the City all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. Contractor agrees to cooperate and execute additional documents reasonably necessary to conform to its obligations under this paragraph.

All documents, together with all unused materials supplied by the City, are to be delivered to the City upon termination of this Agreement before the final payment is made to Contractor.

### 2.8.20. *Accommodations*

- A. A workstation will be provided for Consultant at 200 W. Washington Street, 251 W Washington Street or 149 North 4<sup>th</sup> 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.

## 2.9. CDBG & ESG Supplemental Terms and Conditions

Subrecipient Name: **Enter Name**

Subrecipient Unique Entity Identifier: **Enter UEI Number**

Federal Award Identification Number: **Enter Number**

Federal Award Date: **Enter Date**

Subaward Period of Performance Start and End Date: Effective date of contract through **[end of federal grant period of performance]**

Subaward Budget Period Start and End Date: Effective date of contract through **[end of federal grant period of performance]**

Amount of Federal Funds Obligated to Subrecipient: **\$XXXXX**

Total Amount of Federal Funds Obligated to the Subrecipient: **\$XXXXX**

Total Amount of the Federal Award Committed to the Subrecipient: **\$XXXXX**

Federal Award Project Description: **Enter Name from Subaward Letter**

Name of Federal Award Agency: **Enter Name**

Name of pass-through entity: City of Phoenix

Assistance Listing number and Title: **Enter Info (formerly CFDA)**

Research and Development (R&D) Identification: **Yes/No**

Indirect Cost Rate for Federal Award: de minimis rate of **10%**

### 1. **CONTRACT WORKER BACKGROUND SCREENING:**

- (a) Subrecipient agrees that all Subrecipient workers and subcontractors (collectively "Contract Worker(s)") that Subrecipient furnishes to the City pursuant to this Agreement

are subject to background and security checks and screening (collectively “Background Screening”) at Subrecipient’s sole cost and expense as set forth in this Section. The Background Screening provided by Subrecipient will comply with all applicable laws, rules and regulations. Subrecipient further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare.

(b) The background screening requirements set forth in this section are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Subrecipient from any liabilities that may arise out of the Subrecipient’s services under this agreement or Subrecipient’s failure to comply with this section. Therefore, in addition to the specific measures set forth below, Subrecipient and its Contract Workers will take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

(c) Background Screening Requirements and Criteria. The City has established two levels of risk: Standard and Maximum and associated background screening. The current risk level and background screening required for this Agreement is MAXIMUM RISK . If the scope of work changes, the City may amend the level of risk, which could require the Subrecipient to incur additional contract costs to obtain background screens or badges.

1. Standard Risk Level

A standard risk background screening will be performed when the Contract Worker’s work assignment will:

- (i) require a badge or key for access to City facilities; or
- (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- (iii) allow unescorted access to City facilities during normal and non-business hours.

The background screening for this standard risk level will include a background check for real identity/legal name, and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker’s proposed date of hire.

2. Maximum Risk Level

A maximum risk background screening will be performed when the Contract Worker’s work assignment will:

- (i) include working directly with vulnerable adults or children (under age 18); or
- (ii) have any responsibility for the receipt of payment of City funds or



control of inventories, assets, or records that are at risk of misappropriation; or

(iii) have unescorted access to City data centers, money rooms, high-value equipment rooms, or critical infrastructure sites/facilities; or

(iv) have access to private residences; or

(v) have direct or remote access to Criminal Justice Information Systems (CIS) infrastructure.

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

**Fingerprint verification is required when the Contract Worker is working directly with children or vulnerable adults.** A current Department of Public Safety (DPS) Administration Level fingerprint card satisfies the requirements of a Maximum Risk background check and fingerprint verification.

Additional requirements will apply to any contract where the scope of work includes child care.

(d) Subrecipient Certification; City Approval of Standard or Maximum Risk Background Screening.

Unless otherwise provided for in the Scope of Work, Subrecipient will be responsible for (a) determining whether Contract Worker(s) are disqualified from performing work for the City; (b) submitting pass/fail results to the City for approval for maximum risk level background checks; (c) reviewing the results of the background check every three to five years, dependent on scope; (d) engaging 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.

For Maximum Risk background screenings, upon review of the background information the City will advise the Subrecipient if it believes a Contract Worker should be disqualified. The Subrecipient will evaluate the Contract Worker and if the Subrecipient believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Subrecipient will discuss those circumstances with the City. The City's decision on disqualification of a Contract Worker is final. The City's final documented decision will be an "approve" or "deny" for identified Contract Workers. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Subrecipient, or any contracted agency that assists with review, after the City's completed review.

By executing this agreement, Subrecipient certifies and warrants that Subrecipient 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. By executing this agreement, Subrecipient further certifies and warrants that Subrecipient has satisfied all such background screening requirements for either standard or maximum risk background screening, and verified legal worker status, as required.

Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Subrecipient 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 Subrecipient 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.

(e) Terms of This Section Applicable to all of Subrecipient's Contracts and Subcontracts: Subrecipient will include the terms of this section for Contract Worker background screening in all contracts and subcontracts for services furnished under this Agreement.

(f) 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 Agreement. In addition to the indemnity provisions set forth in this agreement, Subrecipient 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 Subrecipient. 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 Subrecipient from any liabilities that may arise out of the Subrecipient's services under this Agreement or Subrecipient's failure to comply with this section. Therefore, Subrecipient 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.

(g) Continuing Duty; Audit. Subrecipient's obligations and requirements that Contract Workers satisfy this Background Screening Section will continue throughout the entire term of this Agreement. Subrecipient will notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Subrecipient will maintain all records and documents related to all Background Screenings and the City reserves the right to audit Subrecipient's compliance with this Section pursuant to Section 6 above.

## **2. PERFORMANCE INTERFERENCE**

Subrecipient will notify the City's department contact immediately of any occurrence and/or condition that interferes with the full performance of the Agreement and confirm it in writing within 24 hours.

**Department Contact:**

**Phone:**

## **3. SMOKING POLLUTION CONTROL MEASURES:**

The Subrecipient shall be subject to the provisions of City Ordinance No. G-2865, as amended, "the Smoking Pollution Control Ordinance," effective July 1, 1986 and A.R.S. § 36-601-01. These laws regulate smoking in places of employment and enclosed public places located within the City of Phoenix.

## **4. DRUG-FREE WORKPLACE:**

The Subrecipient 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).

## **5. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA):**

The Subrecipient will comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and have a Unique Entity Identifier ("UEI") number.

## **6. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:**

**6.1.** Pursuant to national and City policy to award a fair share of contracts to small and minority businesses, women's business enterprises, and labor surplus area firms, Subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Such affirmative steps must include the following:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

**7. BYRD ANTI-LOBBYING CERTIFICATION (31 U.S.C. 1352):**

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

**7.1.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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.

**7.2.** Each Subrecipient 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.

**7.3.** 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 Subrecipient will 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.

**8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

Applicable to all contracts in excess of \$150,000. The Subrecipient will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the City, HUD, and the San Francisco Regional Office of the Environmental Protection Agency (EPA).

## **9. PROCUREMENT OF RECOVERED MATERIALS**

**9.1.** In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Subrecipient will 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 Subrecipient will procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Subrecipient determines that such items: (1) are not reasonably available in a reasonable time period; (2) fail to meet reasonable performance standards, which will be determined on 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.

**9.2.** Paragraph (a) of this clause will apply to items purchased under this Agreement where: (1) the Subrecipient purchases in excess of \$10,000 of the item under this Agreement; or (2) during the preceding Federal fiscal year, the Subrecipient: (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.

## **10. ENERGY EFFICIENCY**

The Subrecipient will observe all mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.).

## **11. DEBARMENT AND SUSPENSION:**

The Subrecipient agrees to abide by Executive Order 12549, Debarment and Suspension (34 CFR, Part 85, Section 85.510, Participant Responsibilities), published as Part VII of the May 26, 1988, Federal Register (pages 19159-19211). The City may, by giving written notice to the Subrecipient, immediately terminate this Agreement if the City determines that the Subrecipient has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

## **12. CRIMES AGAINST CHILDREN:**

The Subrecipient shall comply with the requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. §13-3620.

**13. SEAT BELT USE:**

Pursuant to EO 13043 (4/16/1997), Increasing the Use of Seat Belts in the US, Subrecipients are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating vehicles, whether organizationally owned or rented or personally owned.

**14. NON-PROFIT STATUS AND REPORTING**

The Subrecipient shall maintain 501(c) 3 status and shall provide certified audits and tax returns annually. The audits and tax returns shall be provided to the City's contract administration representative referenced in paragraph 20 - Notices. The audit/returns are due to the City within 30 days from receipt of the certified audit.

**15. RELIGIOUS ACTIVITIES:**

Beneficiaries shall not be required to participate in any religious activity for any services rendered.

**16. ACCOUNTING:**

The Subrecipient's accounting practices shall be in conformance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) for state and local governmental entities or by the Financial Accounting Standards Board (FASB) for non-governmental entities. The Subrecipient shall maintain separate accounts for City funds awarded under this Agreement.

**17. CLIENT FEES AND PROGRAM INCOME:**

Unless mandated by controlling law, the Subrecipient shall impose no fees or charges of any kind upon recipients for services authorized under this Agreement. However, if program income is generated and received by the Subrecipient as a result of authorized services, it shall be disposed of with guidance from the City and reported in accordance with applicable policies and procedures.

**18. AVAILABILITY OF FUNDS:**

It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the City from HUD pursuant to the ESG and CDBG Program and that therefore the terms, conditions and sums payable under this Agreement are subject to any changes or limitations which may be required by the terms of the ESG or CDBG Program and any grant agreement entered into by the City in connection with the CD Grant.

If any action is taken by any federal, state, local agency, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligation under, or in connection with, this Agreement, then the Parties may amend, suspend, decrease, or terminate their obligations under, or in connection with, this Agreement. In the event of termination, the Parties shall be liable for payment only for services rendered prior to the

effective date of the termination, provided that such services performed are in accordance with the provisions of this Agreement. The Parties shall give written notice of the effective date of any suspension, amendment, or termination under this section at least ten (10) calendar days in advance.

**19. SUBSTANTIAL INTEREST DISCLOSURE:**

**19.1.** The Subrecipient shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in the Subrecipient's organization or with which the Subrecipient (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless the Subrecipient has made a full written disclosure of the proposed payments, including amounts, to the City.

**19.2.** For the purpose of this Section, "relative" shall have the same meaning as in City's Administrative Regulation 2.91 (2) Definition.

**20. COST OR PRICING DATA CERTIFICATION:**

**20.1.** By signing this Agreement, any amendment thereto, or other official form, the Subrecipient certifies, to the best of the Subrecipient's knowledge and belief, any cost or pricing data submitted is accurate, complete, and current as of the date submitted or other mutually agreed upon date. Furthermore, if the City finds that the price was increased because the cost or pricing data furnished by the Subrecipient was inaccurate, incomplete or not current as of the date of certification, the City will readjust the price to exclude any significant amount. Such adjustment by the City may include overhead, profit or fees. When the Agreement rates are set by law or regulation, the certifying of cost or pricing data does not apply.

**21. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS:**

a. In accordance with 41 U.S.C. 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- A member of Congress or a representative of a committee of Congress;
- An Inspector General;
- The Government Accountability Office;

- A federal employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the City, Subrecipient, or a subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**22. FEDERAL IMMIGRATION AND NATIONALITY ACT:**

The Subrecipient shall comply with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees during the term of this Agreement. The Subrecipient shall maintain Employment Eligibility Verification Forms (1-9) as required by the U.S. Department of Labor. At the City's discretion, the City may request verification of compliance. If the Subrecipient does not comply with this requirement, the City retains the right to pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of this Agreement for default, and suspension and/or debarment of the Subrecipient. The Subrecipient shall bear all costs necessary to verify compliance.

**23. PREDECESSOR AND SUCCESSOR AGREEMENTS:**

The execution or termination of this Agreement shall not be considered a waiver by the City of any and all rights it may have for damages suffered through a breach of this or a prior Agreement with the Subrecipient.

**24. NON-MATERIAL CHANGES:**

The Subrecipient shall give written notice to the designated City representative of any of the following non-material changes that affects either programmatic or financial requirements of this Agreement, but a written amendment will not be necessary.

- a. Change of address, telephone number, email, fax number;
- b. Change of Subrecipient's authorized signatory or his/her designee;
- c. Change in the name and address of the designated representatives to which notices are to be sent;
- d. Changes in Agreement related personnel positions of the Subrecipient which do not affect staffing ratios or staff qualifications required under this Agreement;
- e. Change in the name of the Subrecipient where the ownership remains the same;
- f. In Cost Reimbursement or Unit Fee Agreements, whenever there is less than a 10% increase or decrease in any budget category.



**25. GRIEVANCES BY RECIPIENTS OF SERVICES:**

The Subrecipient shall maintain a formal system acceptable to and approved by the City for reviewing and adjudicating grievances by recipients of services or subcontractors arising from this Agreement.

The Subrecipient shall advise all applicants for and recipients of contracted services of their right, at any time or for any reason, to present to the Subrecipient and to the City any grievances arising from the delivery of contracted services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. The City may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.

**26. EVALUATION AND MONITORING:**

The City may evaluate, and the Subrecipient shall agree to cooperate in the evaluation of contracted services. Evaluation may assess the quality and impact of contracted services, either in isolation or in comparison with other similar services and assess the Subrecipient's progress and/or success in achieving the service requirements and deliverables set forth in this Agreement. The Subrecipient agrees that the City may monitor the Subrecipient or subcontractor, in the services delivered, facilities maintained, and fiscal practices. The Subrecipient shall cooperate in such efforts. The Subrecipient shall participate in third party evaluations if the City retains an inspector to monitor this Agreement.

**27. VISITATION AND INSPECTION:**

The Subrecipient's or subcontractor's facilities, services and individuals served, pertaining to the Agreement shall be available for visitation, inspection by the City and any other appropriate agent of the City, State, or Federal Government. At the discretion of the City, visitation and inspection may occur at any time during regular business hours, announced or unannounced. If the Department deems it to be an emergency situation, the City may at any time visit and inspect the Subrecipient's or subcontractor's facilities, services and individuals served.

**28. PROPERTY OF THE CITY:**

Any materials whatsoever, including but not limited to, reports, computer programs and other deliverables, created under this Agreement are the sole property of the City. The Subrecipient is not entitled to a patent or copyright on those materials and may not transfer same to anyone else. The Subrecipient shall not use or release these materials without the prior written consent of the City.

**29. RIGHT OF OFFSET:**

The Subrecipient acknowledges the provisions of the Phoenix City Code which require and demand that no payment be made to any Subrecipient while there is an outstanding

obligation due the City. The City may direct any such obligation be offset against payment due the Subrecipient.

The City shall also be entitled to offset against any sums due the Subrecipient, any expenses or costs incurred by the City, or damages assessed by the City concerning the Subrecipient's non-conforming performance or failure to perform this Agreement, including expenses, costs and damages described in these Terms and Conditions of the Agreement.

**30. NON-WAIVER OF LIABILITY:**

The City, 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, the Subrecipient 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.

**31. POLITICAL ACTIVITIES**

The Subrecipient will not use Community Development Block Grant funds ("CDBG funds") to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. The Subrecipient may, however, use a facility financed with CDBG funds on an incidental basis to permit political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

**32. DISPOSITION OF CDBG-CV PROGRAM INCOME**

At the end of the Community Development Block Grant Program Year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient except those needed for immediate cash need, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash balances held for Section 108 security needs. Any 'program income' (as defined in 24 CFR 570.500, as and if amended) directly related to, and derived from the Subrecipient Grant that the Subrecipient is permitted to retain will, subject to Section 12 hereof, be used by the Subrecipient for any eligible activity permitted under 24 CFR 570.201 and consistent with the Scope of Work and Budget. Such program income will be subject to all applicable laws and regulations covering the use of CDBG funds.

**33. UNFORESEEN DELAY IN PERFORMANCE**

Neither the Subrecipient nor the City will be considered in breach or default of its obligations with respect to improvement of the property or the commencement and completion of rehabilitation of the improvements thereon, in the event of delay due to unforeseeable causes beyond its control and without its fault or negligence. The time for performance of the obligations and length of period of restriction on use will be extended

for the period of the unforeseen delay if the party seeking the extension requests it in writing of the other party within ten (10) days after the beginning of the unforeseen delay. The period of unforeseen delay will be determined by the City.

**34. INDEBTEDNESS TO INTERNAL REVENUE SERVICE OR OTHER PUBLIC ENTITY**

**34.1.** Any judgment, lien, levy or outstanding amount owed to the Internal Revenue Service, State, County, City or other public entity by the Subrecipient will constitute an event of default or breach of this Agreement for purposes of Section 9, unless previously approved by the City in writing, and may constitute sufficient reasons for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

**34.2.** Prior to entering into this Agreement and during the time period covered by this Agreement, the Subrecipient will disclose any information related to the preceding paragraph. This will also include the immediate reporting of breaches in payback arrangements or breaches in other agreements related to the above. Failure to comply with any disclosure provision in this Section may also constitute sufficient reason for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

**35. ENVIRONMENTAL CONDITIONS**

Pursuant to 24 CFR part 58, no CDBG funds may be encumbered prior to the completion of the Environmental Review. The Environmental Review Record (ERR) must be completed before any funds are obligated. Funding is also conditioned upon the completion of the ERR of every activity site by address. The responsibility for certifying the appropriate Environmental Review Record shall rest with the City. It is the responsibility of the Subrecipient to notify the City, and to refrain from making any commitments and expenditures on a site until a written authorization has been issued by the City. Failure to meet these conditions will mean that requested funds will not be disbursed.

**36. PREFERENCE FOR DOMESTIC PROCUREMENT:**

Pursuant to 2 C.F.R. 200.322, to the greatest extent practicable, Contractor will purchase, acquire, or use goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products).

**37. PROHIBITION ON CERTAIN TELECOMMUNICATIONS EQUIPMENT:**

Contractor is prohibited from obligating or expending funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) enter into a contract to procure or obtain equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE

Corporation (or any subsidiary or affiliate of such entities) and such other entities described in 2 C.F.R. 200.216.

## 2.10. Head Start Supplemental Terms and Conditions

### 2.10.1. *Non-Assignability*

This Agreement is in the nature of a personal services agreement and Contractor shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.

### 2.10.2. *Mandatory Disclosures*

The Contractor must disclose, in a timely manner, in writing to City all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Early Childhood Education Expansion award. If Contractor receives Federal funds in excess of \$10,000,000 for any period during the performance of this Agreement it is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM). (See Appendix XII to 45 CFR Part 75). Failure to make required disclosures can result in any of the remedies described in 45 CFR § 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

### 2.10.3. *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 Agreement by any federal department, and agrees to comply with the requirements of 2 CFR Part 180 and 2 CFR Part 376.

### 2.10.4. *Byrd Anti Lobbying Certification (31 U.S.C. 1351)*

In all agreements 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.

#### **2.10.5. *Clean Air Act and Federal Water Pollution Control Act***

Applicable to all contracts in excess of \$150,000. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the City, the Department of Health and Human Services, and the San Francisco Regional Office of the Environmental Protection Agency (EPA).

#### **2.10.6. *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 6.1 of this clause shall apply to items purchased under this Agreement where: (1) the Contractor purchases in excess of \$10,000 of the item under this Agreement; 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.

#### **2.10.7. *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.

#### **2.10.8. Funding**

The City utilizes the United States Department of Health and Human Services (DHHS) funding to support Early Childhood Education. The Contractor shall be solely responsible for understanding and complying with all applicable regulations and requirements throughout this Contract period.

DHHS regulations can be found at: <https://www.acf.hhs.gov/ohs/about/head-start>.

#### **2.10.9. Availability of Funds**

Funding may not be available for performance under this Contract beyond the City's current fiscal year. No legal liability on the part of the City for any payment may arise under this Contract beyond the current fiscal year.

The City may reduce payments or terminate this Contract without further recourse, obligation, or penalty if insufficient funds are appropriated. The City shall have the sole and unfettered discretion in determining the availability of funds.

#### **2.10.10. Political Activity**

The Contractor shall comply with the requirements of the Hatch Act which restricts the political activity of individuals employed by recipient or subrecipients whose principal employment is in connection with an activity financed in whole or in part by grants made by the Federal agency.

#### **2.10.11. Competitive Bidding**

If the purchase of supplies and equipment has been authorized in this Contract, the Contractor shall procure all such items at the lowest practicable cost and shall purchase all non-expendable items costing \$1,000 or more and having a useful life of more than one year through a generally accepted and reasonable competitive bidding process. Any procurement violating this provision shall be considered a financial audit exception. The Contractor shall expend the City funds in a manner that would serve the public interest and honor the public trust.

#### **2.10.12. Accounting**

The Contractor's accounting practices shall be in conformance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) for state and local governmental entities or by the Financial Accounting Standards

Board (FASB) for non-governmental entities. The Contractor shall maintain separate accounts for the City funds awarded under this Contract.

### **2.10.13. Allowable Costs**

The Contractor shall comply with the following Cost Principles as applicable to determine the allowability of incurred costs to reimburse costs under the Contract terms and conditions. The Contractor certifies that funds received under this Contract will be expended to achieve the purposes of this Contract and to meet costs defined as allowable by the federal funding agency or the following federal guidelines:

- 45 CFR Part 75, Subpart E – Cost Principles
- 2 CFR Part 200, Subpart E – Cost Principles

### **2.10.14. Substantial Interest Disclosure**

- A. The Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization that has a substantial interest in the Contractor's organization or with which the Contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest unless the Contractor has made full written disclosure of the proposed payments, including amounts, to the City.
- B. Lease agreements, rental agreements, or purchase of real property covered by Paragraph A of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.
- C. For the purpose of this Section, "relative" shall have the same meaning as in the City's Administrative Regulation 2.91 (2) Definition.

### **2.10.15. Limitations of Federal Interest**

Provider shall not mortgage, use as collateral for a credit line or for other loan obligations, or sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed, or renovated with Head Start funds without the City's written permission.

Provider must have the City's written permission before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the Provider's application was approved.

### **2.10.16. Cost or Pricing Data Certification**

By signing this Contract, any amendment thereto, or other official form, the Contractor certifies, to the best of the Contractor's knowledge and belief, that any cost or pricing data submitted is accurate, complete, and current as of the date submitted or other mutually agreed upon date. Furthermore, if the City finds that the price was increased because the cost or pricing data furnished by the Contractor was inaccurate, incomplete, or not current as of the date of certification, the City will readjust the price to exclude any significant amount. Such adjustments

by the City may include overhead, profit, or fees. When the Contract rates are set by law or regulation, the certifying of cost or pricing data does not apply.

#### **2.10.17. *Davis Bacon***

All laborers and mechanics employed by contractors or subcontractors on a project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the U.S. Secretary of Labor, regardless of contractual relationship. Wages must be paid weekly.

#### **2.10.18. *Copeland Act (Anti-Kickback Law)***

Whoever by force, intimidation, or threat of procuring dismissal from employment or by any other manner whatsoever induces any person employed in the construction, prosecution, completion, or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract or employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

#### **2.10.19. *Department of Labor Rules***

A Federal Agency and its local agency grantees administering construction projects are primarily responsible for enforcing pertinent labor provisions. To achieve uniform compliance with specific enforcement responsibilities, the U.S. DOL has promulgated the following rules:

- **29 CFR Part 1:** Establishes methods for determining prevailing rates and describes when they "lock in" for the project duration.
- **29 CFR Part 3:** Details the conditions under which deductions from wages are permitted or not permitted. Contractors must also file weekly statements showing wages paid and accounting for any deductions made.
- **29 CFR Part 5:** Labor standards clauses which must be included in construction contracts; responsibility of Federal agencies (e.g., HUD) for enforcement measures such as the examination of payrolls, investigations, and withholding of funds, if necessary; it further addresses hearings, rulings, and interpretations as well as variations, tolerances, and exemptions.
- **29 CFR Part 7:** Provides for appeals to the Department of Labor's Wage Appeals Board as to questions concerning both law and fact arising from decisions of the Solicitor of Labor regarding wage determinations, debarment, and other matters relating to labor standards provisions.

#### **2.10.20. *Professional Standards***

Licensure/Education/Training Requirements Levels of staff qualifications and applicable site licenses must be submitted prior to the beginning of Service.



A. Provider shall submit a copy of a current Arizona Childcare License or a provisional license to the City prior to the opening of a new classroom and for all existing classrooms. This license must always be maintained on file and on-site during the term of this Contract.

B. LICENSING VIOLATIONS:

- Head Start funds may not be used to pay violations.
- The City may close a site in its sole and absolute discretion if it receives 2 or more enforcements in any 12-month period.

C. Provider shall require paid employees assigned to classrooms to be trained in First Aid and CPR and to maintain a current certificate. In addition, before and during the first 3 months of employment, training and orientation should detail health and safety issues for early care and education settings, including, but not limited to:

- Recognition and reporting of child abuse and neglect.
- Typical and atypical child development.
- Pediatric first aid and CPR.
- Safe sleep practices.
- Poison prevention.
- Standard precautions for the prevention of communicable disease.
- Emergency preparedness.
- Nutrition and age-appropriate feeding.
- Medication administration.
- Care plan implementation for children with special health care needs.
- Prevention and response to emergencies due to food and allergic reactions.

Caregivers/teachers should complete training before administering medication to children. See Standard 3.6.3.3 of the Head Start Program Performance Standards for more information. All directors or program administrators and caregivers/teachers should document receipt of training. Providers should not care for children unsupervised until they have completed training in pediatric first aid and CPR; standard precautions for the prevention of communicable disease; and poison prevention.

Provider shall ensure that all teachers who deliver Head Start services meet the Head Start and State of Arizona requirements. Providers will ensure compliance with the following:

45 CRF § 1302.91. Head Start Performance Standards – Staff Qualifications and Competency Requirements.

- (a) Purpose. A program must ensure all staff and contractors engaged in the delivery of program services have sufficient knowledge, training, experience, and competencies to fulfill the roles and responsibilities of their positions and to ensure high-quality service delivery in accordance with program performance standards. A program must provide ongoing training and professional development to support staff in fulfilling their roles and responsibilities.
- (b) Head Start Director. A program must ensure a Head Start director hired after November 7, 2016, has, at a minimum, a baccalaureate degree and experience in supervision of staff, fiscal management, and administration.
- (c) Fiscal Officer. A program must assess staffing needs in consideration of the fiscal complexity of the organization and applicable financial management requirements and secure the regularly scheduled or ongoing services of a fiscal officer with sufficient education and experience to meet their needs. A program must ensure a fiscal officer hired after November 7, 2016, is a Certified Public Accountant or has at a minimum, a baccalaureate or advanced degree in accounting, business, fiscal management, or a related field.
- (d) Educational Coaches. Staff and consultants that serve as education managers or coordinators, including those that serve as curriculum specialists, have a baccalaureate or advanced degree in early childhood education or a baccalaureate or advanced degree and equivalent coursework in early childhood education with early education teaching experience.
- (e) Head Start Center-Based Teacher Qualification Requirements. As prescribed in section 648A(a)(3)(B) of the Head Start Act, a program must ensure all center-based teachers have at least an associate degree or baccalaureate degree in child development or early childhood or equivalent coursework.
- (f) Head Start Assistant Teacher Qualification Requirements. As prescribed in section 648A(a)(2)(B)(ii) of the Head Start Act, a program must ensure Head Start assistant teachers, at a minimum, have a CDA credential **or** are enrolled in a program that will lead to an associate or baccalaureate degree **or** are enrolled in a CDA credential program to be completed within two years of the time of hire.

If the CDA credential is not obtained within two years of hiring, staff will be removed from the Head Start classroom.

- D. All instructional staff are encouraged to participate in the Arizona Early Childhood Workforce Registry, <https://www.azregistry.org> (Registry), as prescribed in 1302.53 (b)(2) of the Head Start Act. Staff will be required to participate in the Registry after the City begins participating in the Arizona Quality Rating and Improvement System (QRIS).

### **2.10.21. *Smoking Pollution Control Measures***

Provider shall be subject to the provisions of City Ordinance No. G-2865, as amended, the “Smoking Pollution Control Ordinance”, effective July 1, 1986, Arizona Revised Statute § 36-601-01 and the Pro-Children Act of 1994, 20 USC 7183, which prohibits smoking in any indoor facility or portion of a facility owned, leased, or contracted for use for the routine or regular provision of federally funded health care, daycare, or early childhood development, including Head Start Services for children under the age of 18. These laws regulate smoking in places of employment and enclosed public places within the City of Phoenix.

### **2.10.22. *Crimes Against Children***

Provider shall comply with the requirements related to reporting to a Peace Officer or Child Protective Services incidents of crimes against children as specified in Arizona Revised Statute § 13-3620.

## **2.11. Defense and Indemnification**

### **2.11.1. *Standard General Defense and Indemnification***

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

### **2.11.2. *Professional Services***

Consultant (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against

any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor 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 Indemnitee 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.

## 2.12. Insurance Requirements

### 2.12.1. *Consultant's Insurance*

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

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

### 2.12.2. *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.

### 2.12.3. *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 Consultant related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- The Consultant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

#### **2.12.4. *Automobile Liability***

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- The Consultant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

#### **2.12.5. *Worker's Compensation and Employers' Liability***

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.

- This requirement does not apply when a consultant or subconsultant is exempt under A.R.S. §23-902(E), **AND** when such consultant or subconsultant executes the appropriate sole proprietor waiver form.

### **2.12.6. Professional Liability (Errors and Omissions Liability)**

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- 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.

### **2.12.7. Notice of Cancellation**

For each insurance policy required by the insurance provisions of this Contract, the 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 [hsdprocurement@phoenix.gov](mailto:hsdprocurement@phoenix.gov).

### **2.12.8. 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 Consultant from potential insurer insolvency.

### **2.12.9. Verification of Coverage**

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 [hsdprocurement@phoenix.gov](mailto:hsdprocurement@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.**

### **2.12.10. Subconsultants**

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

### **2.12.11. Approval**

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

### **3. SUBMITTALS**

#### **3.1. Submittals**

##### **3.1.1. AFFIDAVIT**

The undersigned Offeror hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Proposals (RFP) and referenced materials. Offeror further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the Offeror.

The undersigned Offeror acknowledges and states, under penalty of perjury, as follows:

- A. The City is relying on Offeror's submitted information and the representation that Offeror has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
- B. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Offeror
- C. Offeror has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
- D. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any Offeror errors or omissions.
- E. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
- F. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
- G. This proposal is valid for a minimum of NO VALUE days after the RFP proposal deadline.
- H. All costs incurred by Offeror in connection with this proposal shall be borne solely by Offeror. Under no circumstances shall the City be responsible for any costs associated with Offeror's proposal or the RFP process.
- I. Offeror has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
- J. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
- K. To the best of the Offeror's knowledge, the information provided in its proposal is true and correct and neither the undersigned Offeror nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.



### ***3.1.2. Copies***

Please submit one electronic copy (via email [HSDprocurement@phoenix.gov](mailto:HSDprocurement@phoenix.gov)) 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 NO VALUE calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release Offer(s).