



**CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
DESIGN AND CONSTRUCTION PROCUREMENT**

REQUEST FOR QUALIFICATIONS

**CHILDREN'S MUSEUM OF PHOENIX GO BOND EXPANSION
ARCHITECTUAL SERVICES
AR00000022**

**PROCUREPHX PRODUCT CATEGORY CODE 906000000
RFx 6000001633**

REQUEST FOR QUALIFICATIONS

The City of Phoenix is seeking a qualified consultant team to provide architectural services for the Children's Museum of Phoenix. Services will include programming, design and possible construction administration and observation services. This project site is located at the Children's Museum of Phoenix (Monroe School building), 215 N. 7th Street, Phoenix, Arizona 85034. The estimated construction cost is \$6.4 million, which excludes exhibit fixture design, fabrication, and installation.

SECTION I – PROJECT DESCRIPTION

On behalf of the Children's Museum of Phoenix, the City of Phoenix seeks to renovate and upgrade unfinished spaces in the historic Monroe School building. This building was originally constructed in 1913 and is on the National Register of Historic Places. The capital improvement project intends to develop and finish areas that comply with building codes to transition approximately 28,000 square feet of building shell space to public exhibit/event and support staff spaces. In addition to the interior spaces, the selected consultant team may be asked to consult on potential exterior programming and exhibits to existing interior areas.

The preliminary project schedule targets the pre-design/design for late 2024 and construction to start the end of Summer 2025, with construction finishing the end of Spring 2026. This timeline is subject to change based on the outcome of the Pre-Design Phase.

The project scope of work may include but not be limited to abatement, demolition, partitions, doors, windows, finishes, structural, mechanical, plumbing, electrical, and special systems. Key considerations are as follows:

- Renovation of nearly 18,000 square feet of unfinished areas to provide public spaces for exhibits and programs
- Development of nearly 10,000 square feet of underdeveloped areas to provide staff support
- Two (2) rooms may require major structural improvements
- Eight (8) rooms lack a Certificate-of-Occupancy
- Five (5) rooms lack environmental conditioning
- Eight (8) or more rooms require lead abatement
- Eleven (11) rooms require build-out to provide partitions, lighting, power, and fire alarm systems, security systems, communication systems, and other special systems.

The Children's Museum of Phoenix has hired a third-party Owner's Representative firm to extend the museum's leadership and represent their interest in all phases from planning through completion of the project.

SECTION II – SCOPE OF WORK

The consultant team will be responsible for general project administration, schematic design/pre-design phase (30%), design development phase (60%, 90% and 100%), commissioning, cost analysis, construction documents and specifications, and possible construction administration and observation.

It is anticipated that this project will be constructed using the Construction Manager at Risk (CMAR) delivery method.

The consultant shall have demonstrated experience in design and construction of similar projects.

The scope of work may include but not be limited to the following:

General Project Administration:

- Coordinate with the City and CMAR during the design of the project
- Attend all project meetings as necessary to maintain the project objectives
- Submit and retrieve all required documents to and from various agencies, including City of Phoenix Historic Preservation
- Coordinate all permits and approvals from federal, state, county, and local utility authorities
- Prepare and submit written monthly progress reporting during entire design period
- Perform all design services under this contract for each design phase package

- Develop and update project directory and coordinate monthly distribution with City and CMAR

Pre-Design:

- Lead meetings with stakeholders to validate space program requirements
- Develop preliminary plans and renderings to present concepts and verify course of the project
- Prepare and reconcile cost models and preliminary timelines for the project with the Project Management Team
- Prepare a Project Definition Manual that includes scope, budget, and schedule

Design:

- Develop and submit drawings and specifications at 30%, 60% and 90% phases of design
- Collaborate with the City to meet project requirements, which include scope, budget, and schedule
- Prepare necessary exhibits and make presentations to stakeholders including regulatory agencies
- Develop studies to lead to recommended solutions for the decision-making process
- Consult with the City to meet project requirements
- Address stakeholder and CMAR design/constructability review comments from milestone reviews
- Prepare construction cost estimates for each design phase milestone
- Reconcile with CMAR construction cost estimate(s) for each design phase milestone
- Perform value engineering / cost reduction efforts to optimize project budget
- Develop a schedule for City approval of design submittals for planning department review(s)
- Identify private and public utility easements
- Design project to conform to requirements of Title 34, Arizona Revised Statutes
- Coordinate with CMAR in developing design documents
- Coordinate and submit the design packages to CMAR for bid to subcontractors
- Review of and recommendations regarding cost models/GMPs provided by the CMAR contractor
- Assist in value engineering process
- Other services as required to support successful completion of the work and the City's interests

Possible Construction Administration and Observation (CA&O) services shall include, but are not limited to the following:

- Provide general project administration and construction observation to ensure compliance with the project plans and specifications
- Participate in the CMAR construction progress meetings and other project meetings to prosecute the work
- Prepare weekly observation reports detailing construction progress to keep City informed of project status and issues
- Perform record keeping and maintain project documents including correspondence, schedules, submittals, test data, payments, meeting minutes, specifications, drawings, photographs, shop drawing, as-builds, etc.
- Review and comment on CMAR construction submittals; product data, shop drawings, samples, etc.
- Respond to Requests for Information (RFI)
- Prepare Change Order requests and Proposal Requests (issue interpretations and clarifications of the construction documents)
- Perform field inspection and prepare reports to ensure compliance with the project plans and specifications
- Review and validate entitlement of CMAR's proposed potential change notifications and change orders and submit recommendations to City
- Participate in cost/credit change review meetings with third party estimators
- Observe building system equipment start-up and commissioning
- Review and certify CMAR monthly progress payments
- Prepare and submit punch list and record documents
- Notify CMAR and Owner of any unsafe conditions observed at the construction site(s)
- Conduct Substantial Completion walkthrough
- Issue recommendation for Substantial Completion
- Review and comment on closeout documentation, which includes CMAR's as-built documents to incorporate into project record documents
- Review CMAR's record drawings monthly and prepare final record drawings
- Conduct Pre-final and Final walkthrough
- Conduct the 11 ½ month warranty walkthrough and inspection
- Other services as required to support successful completion of the work and the City's interests

See attached Exhibit B for Sample Draft Agreement.

Use of UNIFIER, an Application Service Provider (ASP) web-based project management database, may be required. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Project Manager.

- The Consultant will be required to maintain all project records in electronic format.
- The City provides an ASP web-based project management database which the Consultant will be required to utilize in the fulfillment of the contract requirements.
- The Consultant shall provide a computerized networked office platform with broadband internet connectivity.
- UNIFIER training will be provided through the City of Phoenix to firms under contract.

SECTION III - PRE-SUBMITTAL MEETING

A pre-submittal meeting will be held at 3:30 p.m. on July 11, 2024, at the Children's Museum of Phoenix located at 215 N. 7th Street, Phoenix, Arizona 85034. The meeting will be held in the Monroe Meeting Room located on the 2nd Floor. A site tour will follow the pre-submittal meeting. At this meeting, City staff will discuss the scope of work, general project requirements, and respond to questions from the attendees. It is strongly recommended that interested consultants attend the pre-submittal meeting. Inquiries regarding the project scope outside of this pre-submittal meeting must be directed to the Contracts Specialist.

SECTION IV - STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

A Firm will be selected through a qualifications-based selection process based on the criteria below. Sub-criteria are listed in order of importance in relation to project services. City of Phoenix project experience is not required.

A. Design and Construction Administration and Observation Experience of the Prime Firm (maximum 50 points)

Describe the experience and qualifications of the prime firm in providing design services and Construction Administration and Observation for similar projects within the past 10 years. Identify projects the submitting firm has completed. For each project listed, provide:

1. Description of the project including scope and project owner.
2. Role of the firm and explain how this relates to the services being solicited.
3. Project's original contract value, final contract value, and reason for variance.
4. Project's start date and completion date.

B. Design and Construction Administration and Observation Experience of the Key Personnel and Subconsultants (maximum 50 points)

Describe the experience and qualifications of the specific project team expected to be assigned to this project in providing design services and Construction Administration and Observation for similar projects, within the past 10 years. For each key person identified, list their length of time with the firm. List each key person's role in the projects provided. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For each project listed, provide:

1. Description of the project including scope and project owner.
2. Role of the team or team member and explain how this relates to the services being solicited.
3. Project's original contract value, final contract value, and reason for variance.
4. Project's start date and completion date.

C. Project Understanding and Approach (maximum 200 points)

Describe your firm's understanding of the City's need for this project, including important considerations such as project issues and challenges. In addition, provide the following:

1. Discuss the specific challenges your firm has identified on an interactive museum or similar project type and how you intend to or have addressed those issues. Use examples from

- comparable facilities and any issues that arose in the design, construction, and development of those initiatives.
2. Describe your firm's approach to engaging internal and external stakeholders, the Owner's Representative and how your firm will lead and manage the design team during design and construction phase services.
 3. Describe your firm's approach to synchronize the scope, schedule, and budget, identify the systems that will be used to synchronize those items, and the ability to manage the objectives using those systems over the course of the project.
 4. Describe your firm's method and approach to Construction Manager at Risk (CMAR) project delivery in the active, populated environment of the Children's Museum of Phoenix. The museum will remain open throughout the course of construction.

D. Staffing Information for Key Personnel (maximum 100 points)

Provide the following:

1. Team's availability and commitment to the project, including sub-consultants.
2. Team's plan to maintain continuity of the proposed services.
3. Organization chart showing key personnel, current professional licenses, or certifications, and assigned roles and responsibilities for both Design and Construction Administration and Observation services for the project.
4. Identify the location of the lead firm's principal office and the home office location of key staff on this project.
 - a. Identify where the design team members intend to perform services and how the firm will coordinate effective services with the design team members if assigned at different locations.

E. Reference Check (maximum 21 points*)

Use the form provided (Exhibit A) to obtain at least three references. It is preferred no more than one be a City of Phoenix project. If your firm has not completed prior projects with other agencies, you will not be penalized. It is **recommended** there be references outside the City of Phoenix.

*These points are in addition to the 400 points for the SOQ.

SECTION V - SUBMITTAL REQUIREMENTS

New Electronic Submittal Process: Firms interested in this project must submit a Statement of Qualifications (SOQ) electronically via email to the assigned Contracts Specialist, Tom Carroll at Tom.Carroll@phoenix.gov

Submittal requirements are as follows:

- Vendor Information:** All firms must be registered in the City's Vendor Management System prior to submitting a proposal. For new firms, the City will send an email to your firm with a vendor number within two business days of submitting the request. The vendor number should be included on the cover of the SOQ. Information on how to register with the City is available at:

<https://www.phoenix.gov/financesite/Pages/EProc-help.aspx>

If your firm is already registered with the City of Phoenix's ProcurePHX system, please visit <https://eprocurement.phoenix.gov/irj/portal> to login and access the electronic solicitation.

- The product category code for this RFQ is 906000000 and the RFx number is 6000001633.**

Submittals:

- Submittals must be **emailed** to the assigned Contracts Specialist by the submittal due date and time.
- Submit only one SOQ electronically, in .PDF format only, addressing all evaluation criteria. No hard copies will be accepted.

- Clearly display the firm name, vendor number, project title, and project number on the cover of the SOQ.
- A maximum of **15 pages** is permitted to address all content in the SOQ submittal. (**Maximum page limit includes evaluation criteria and all additional content. It does not include information sheet.**)
- Submit electronically the Statement of Qualifications by **12:00 noon, Phoenix time, on Friday, July 26, 2024.**
- Upload one complete version of the SOQ addressing all the criteria. Upload format is .PDF.
- Page size must meet requirements of 8½" x 11".
- Font size must not be less than 10 point.
- Content count:
 - ✓ Each side of a page containing evaluation criteria and additional content will be counted toward the maximum page limit noted above.
 - ✓ Pages that have project photos, charts and/or graphs will be counted towards the maximum page limit noted above.
 - ✓ Front and back covers, information sheet, Table of Contents pages, and divider (tab) pages **will NOT** be counted toward the maximum page limit noted above, unless they include evaluation criteria and additional content that could be considered by the selection panel.

Information Sheet: Provide an information sheet that includes project title, project number, RFx number, **full legal firm name (not a trade name)**, address, phone number, vendor number, and the name, title, email address and signature of your contact person for the project. Do not include any additional information.

Evaluation Criteria: Address the SOQ evaluation criteria.

Additional Content: Resumes and other information may be included (*content shall be included within the permitted maximum page limit*).

Note: All pages exceeding the specified maximum page limit will be removed from the submittal and not considered in evaluating a submitted SOQ.

SECTION VI – GROUNDS FOR DISQUALIFICATION

The following **will be grounds for disqualification**, and will be strictly enforced:

- Submitting the SOQ to the assigned Contracts Specialist after the submittal due date and time.
- Violating the “Contact with City Employees” policy contained in this RFQ.

SECTION VII - SELECTION PROCESS AND SCHEDULE

Interested firms will submit a SOQ. The firm will be selected through a qualifications-based selection process. A selection panel will evaluate each SOQ per the criteria set forth in Section IV above.

Finalists from the SOQ evaluation will be invited to participate in detailed interviews. A letter to each finalist will contain the evaluation criteria to be used during the interview presentation. Interview evaluations to select the highest qualified firm include scores from the SOQ evaluation process. The City may conduct a due diligence review on the firm receiving the highest evaluation.

The City expects to create a final list of at least three, but not more than five firms for this project. The City will enter into negotiations with the selected firm and execute a contract upon completion of negotiation of fees, contract terms, and City Council approval.

The following tentative schedule has been prepared for this project. Firms interested in this project must be available on the dates as specified below.

Pre-submittal meeting and Site Tour	July 11, 2024
SOQs due	July 26, 2024
Firms notified for interview	August 6, 2024

If the City is unsuccessful in negotiating a contract with the best-qualified firm, the City may then negotiate with the next most qualified firm until a contract is executed, or the City may decide to terminate the selection process. Once a contract is executed with the successful firm, the procurement is complete.

Firm(s) on the short list for interviews for this project will be notified directly by the City. Notification to all other firms on the status of a short list for this project will be posted on the City of Phoenix's "Tabulations, Awards, and Recommendations" website:

<http://solicitations.phoenix.gov/awards>

All submitting firms will be notified of selection outcome for this project. The status of a selection on this project will be posted on the City of Phoenix's "Tabulations, Awards, and Recommendations" website:

<http://solicitations.phoenix.gov/awards>

The selected Consultant should expect to comply with the Arizona State Statutes Title 34 and City of Phoenix Design and Construction Procurement's contract provisions.

SECTION VIII– GENERAL INFORMATION

Citywide Capital Improvement Projects. Consulting and contractor services supporting the City's Capital Improvement Projects are procured under the authority of the City Engineer, currently located within the Street Transportation Department. Design and Construction Procurement coordinates the citywide consulting and construction contracting procurement processes.

Changes to Request for Qualifications. *Any changes to this Request for Qualifications (RFQ) will be in the form of a Notification.* The City of Phoenix shall not be held responsible for any oral instructions. Notifications are available on both the Current Opportunities and ProcurePHX webpage.

It shall be the responsibility of the registered RFQ holder to determine, prior to the submittal of the Statement of Qualifications, if a Notification has been issued. Registered RFQ holders may refer to the web page or call the Contracts Specialist (listed below) to ascertain if a Notification has been issued for this project.

Alternate Format. For more information or a copy of this publication in an alternate format, contact the Contracts Specialist (listed below) - Voice or TTY 711. Requests will only be honored if made within the first week of the advertising period.

Release of Project Information/Public Records Request. The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City. To submit a Public Records Request, visit phoenix.gov/prr.

City Rights. The City of Phoenix reserves the right to reject any or all Statements of Qualifications, to waive any informality or irregularity in any Statement of Qualifications received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

Contact with City Employees. This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.**

Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Proposer), will refrain from any direct or indirect contact with any person (other than the designated Contract Specialist) who may play a part in the selection process,

including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the RFQ solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to this RFQ solicitation with City staff.

Commencing on the date and time a solicitation is published, potential or actual proposers (including their representatives) will 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 the Arizona Revised Statutes, 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.

Proposers may discuss their proposal or the RFQ solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Contract Specialist (listed below), conducted in person at 200 W. Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least twenty-four (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.

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

Protest Procedures. Firms responding to disqualification or a procurement outcome are referred to the Code of the City of Phoenix Chapter 2, Article XII, Section 2-187 to 2-190.4, which governs protest procedures utilized throughout the selection process. The procedures may be reviewed through the City of Phoenix website at:

<http://www.codepublishing.com/az/phoenix/>

A copy of the Protest Policy is also available online at:

<https://www.phoenix.gov/streets/procurement-opportunities>

Questions - Questions pertaining to this selection process or contract issues should be directed to the Contracts Specialist, Tom Carroll at (602) 534-1423 or email Tom.Carroll@phoenix.gov.

EXHIBIT A
CONSULTANT REFERENCE CHECK INSTRUCTIONS, FORM, AND SAMPLE LETTER

The attached Consultant Performance Evaluation Form is to be provided to the agencies or entities for which your firm has recently provided services relevant to those requested for this project. Provide the evaluation form to the Owner, or the Owner's representative directly responsible for oversight of the project to complete and submit to the email box listed below.

The first three references submitted will be accepted and the scores utilized as part of the evaluation process. Each reference check is worth up to 7 points for a total of up to 21 points available.

The form is to be completed by the agency or entity and uploaded to the (email box) at:

soq.referencechecks@phoenix.gov

The procurement identifier is:

6000001633

Attention: Tom Carroll

Also attached is a sample performance evaluation cover letter that may be used when sending the reference check request.

Sample Consultant Performance Evaluation Cover Letter

Sample Cover Letter
Contact Name
Address of Reference

(Your Name) is responding to a Request for Qualifications (RFQ) from the City of Phoenix Office of the City Engineer's Design and Construction Procurement section.

The City is requesting reference information related to our past performance. As a part of the response submittal process, the City is requesting performance evaluations from agencies that our firm has performed services for either in the past or is currently receiving services.

I would appreciate your cooperation in completing the attached Consultant Performance Evaluation form and return by email the completed form by 12:00 pm Phoenix time on **July 26, 2024** to:

soq.referencechecks@phoenix.gov

Reference in Subject Line: RFx #6000001633

For questions, contact Tom Carroll, Contracts Specialist at 602-534-1423.

Failure to submit the Consultant Performance Evaluation form by the above date will have a negative impact on the proposal we submit for this service. Your cooperation in submitting this form by this date is appreciated.

If you have any questions regarding this request, please contact (your name) at (your telephone number).

Sincerely,

INSTRUCTIONS FOR COMPLETING CONSULTANT PERFORMANCE EVALUATION

Evaluate the consultant's contract performance in each of the rating areas listed below. On the Consultant Performance Evaluation form, circle the rating from 1 to 4 that most closely matches your evaluation of the consultant's performance. Comments are not required but appreciated. **Every rating area must be scored.**

The Design and Construction Procurement section will use the information from this form to evaluate firms competing for contract award. **This completed form will become public record and upon request, will be released to the consultant or any other entity.**

Please submit the completed form to the address indicated on the bottom of the Consultant Performance Evaluation form. Thank you for your time and your cooperation.

CHILDREN'S MUSEUM OF PHOENIX GO BOND EXPANSION

AR00000022

RFx: 6000001633

CONSULTANT PERFORMANCE EVALUATION FOR _____

(firm name)

In the box below, provide the project title, contracted services provided by the firm, and start and completion date of services. This form is to be completed by the Owner, or the Owner's representative directly responsible for oversight of the project. The project services evaluated must be relevant to the services of this project. Every rating area must be scored.

RATINGS: Summarize the Consultant's performance and **circle the number** below that corresponds to the performance rating for each category. Please see the rating scale.

1 = Unsatisfactory (.25 pt.); 2 = Poor (.50 pt.); 3 = Good (.75 pt.); 4 = Excellent (1.0 pt.)

HOW WOULD YOU RANK THE BUSINESS RELATIONSHIP BETWEEN THE OWNER AND THE FIRM?	4 3 2 1	Comments:
WAS THE TEAM PRESENTED IN THE PROPOSAL THE TEAM THAT WORKED ON THE PROJECT TO COMPLETION?	4 3 2 1	Comments:
WAS STAFF PROACTIVE IN SOLVING PROBLEMS THAT MAY HAVE OCCURRED ON THE PROJECT?	4 3 2 1	Comments:
WAS THE CONTRACTED SCOPE OF SERVICES COMPLETED ON TIME AND WITHIN BUDGET?	4 3 2 1	Comments:
HOW WOULD YOU RATE THE QUALITY OF WORK PERFORMED BY THIS FIRM ON YOUR PROJECT?	4 3 2 1	Comments:
DID THE FIRM RECOMMEND EFFICIENCIES OR PROVIDE INNOVATIVE IDEAS OR SUGGESTIONS?	4 3 2 1	Comments:

WOULD YOU BE WILLING TO CONTRACT WITH THIS FIRM AGAIN? (YES = 1 point)	YES NO	Comments:
TOTAL SCORE		(MAXIMUM 7 POINTS)

Reference Evaluation Provided By:

Name and Title: _____

Agency/Organization: _____

Date: _____

Telephone Number: _____

Email completed form by July 26, 2024 by 12:00 pm Phoenix time to:

soq.referencechecks@phoenix.gov

***EMAIL SUBJECT LINE SHOULD REFERENCE RFx NUMBER 6000001633**

The document should reference the project number and firm for which the reference check is being submitted. If no project number is available, reference the service and firm for which the reference check is being submitted.

EXHIBIT B
MASTER AGREEMENT – DRAFT
(ATTACHED)



**CHILDREN'S MUSEUM OF PHOENIX GO BOND EXPANSION
PROFESSIONAL SERVICES
PROJECT AR0000022**

AGREEMENT _____

DRAFT

TABLE OF CONTENTS

RECITALS..... 3
SECTION 1 – PROJECT DESCRIPTION 3
SECTION 2 – PERIOD OF SERVICE 3
SECTION 3 – COMPENSATION AND PAYMENTS 3
SECTION 4 – CITY’S RESPONSIBILITY..... 5
SECTION 5 – CONSULTANT’S RESPONSIBILITIES 5
SECTION 6 – DEFINITIONS..... 6
SECTION 7 – GENERAL CONDITIONS..... 8
EXHIBIT A – INSURANCE AND INDEMNIFICATION REQUIREMENTS..... 255
EXHIBIT B – BACKGROUND SCREENING 300
EXHIBIT C – TRAVEL REIMBURSEMENT PROCEDURE..... 37
EXHIBIT D – DEPARTMENT SPECIFIC REQUIREMENTS..... 38
EXHIBIT E – SBE/DBE REQUIREMENTS (NOT USED)..... 39
EXHIBIT F – SUPPLEMENTAL TERMS AND CONDITIONS..... 40
ATTACHMENT 1 - SCOPE OF SERVICES..... 41
ATTACHMENT 2 - BILLABLE RATES..... 42
ATTACHMENT 3 - INSURANCE CERTIFICATES..... 43

DRAFT

THIS AGREEMENT is entered into by the City of Phoenix, an Arizona municipal corporation ("**City**"), and -----**FIRM NAME**-----, a/an [state where formed] [entity type (Corp., LLC, etc.)] ("**Consultant**"), effective on the date the City Clerk attests ("Effective Date"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

RECITALS

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

The City proposes to renovate and upgrade all unfinished spaces at the Children's Museum of Phoenix in the historic Monroe School Building, as more fully described in Attachment 1 and referred to as the "Project."

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

On _____, 20__, the Phoenix City Council passed Ordinance S-____, authorizing City to enter into this Agreement.

AGREEMENT

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

SECTION 1 – PROJECT DESCRIPTION

The project is to renovate and upgrade nearly 18,000 square feet of unfinished areas to provide public spaces for exhibits and programs, the development of nearly 10,000 square feet of underdeveloped areas to provide staff support spaces and to make the entire building usable and bring it up to current building codes. See **ATTACHMENT 1** for detailed scope of services.

SECTION 2 – PERIOD OF SERVICE

2.1. Period of Service

Consultant's failure to adhere to the work schedule, attached and incorporated in **ATTACHMENT 1** is sufficient grounds for City to terminate this Agreement.

No phase will count the time used for City's own reviews and approvals against Consultant's allotted days.

SECTION 3 – COMPENSATION AND PAYMENTS

3.1. Not to Exceed

Consultant's fee for completion of all work will not exceed \$[enter amount].

Consultant's fee for basic services is not to exceed \$[enter amount].

Additional Services and Allowances not to exceed \$[enter amount]
Identify services and firm providing services \$

Total, not to exceed \$[enter amount]

- 3.2. Subconsultant fees are included as "Additional Services".
- 3.3. The fees for Consultant (and any subconsultant(s)) are based on the agreed hourly rates, attached and incorporated in **ATTACHMENT 2**.
- 3.4. Consultant must submit monthly requests for payment on City's payment-request form, which must include a progress report and detailed invoices (with receipts if applicable). Consultant's submittal must also include: (1) a narrative description of tasks accomplished during the billing period; (2) a listing of any deliverables submitted; and (3) any subconsultant's request for payment with similar narratives and listings of their work.
 - 3.4.1. City will pay for any services negotiated as a not-to-exceed fee according to the work effort expended on that service during the month.
 - 3.4.2. City will pay for any services negotiated as a lump sum according to the percentage of work completed during the month.
 - 3.4.3. City will pay for any Additional Services and Allowances as a not-to-exceed fee according to the work effort expended on that service during the month.
- 3.5. Consultant must submit all payment requests for City's review and approval.
- 3.6. Consultant must pay all sums due to subconsultants for services and reimbursable expenses within seven days of Consultant receiving payment for those services from City. Consultant must pay subconsultants in accordance with Arizona Revised Statute § 34-221.
- 3.7. If authorized by City, Consultant will receive reimbursement at cost for: (1) non-overhead printing expenses incurred in excess of those required for basic services; (2) courier services; or (3) other project-related services requested by City.
- 3.8. Additional work, when authorized by an executed contract amendment, will be compensated for by a fee mutually agreed upon between the City and the Consultant.
- 3.9. No compensation to the Consultant will be allowed contrary to Chapter XIX, Section 2, Phoenix City Charter (no payment of more than 90% of the total contract price before completion of the total work).

- 3.10. **[Delete this paragraph if not applicable.]** Reasonable charges for travel will be reimbursed. Travel expenses will not exceed \$**[enter amount]** without City's approval. Consultant is entitled to reimbursement according to City's travel reimbursement policy, attached and incorporated as **EXHIBIT C**, and will provide detailed receipts to City as required.

SECTION 4 – CITY'S RESPONSIBILITY

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

SECTION 5 – CONSULTANT'S RESPONSIBILITIES

- 5.1. The Consultant must perform professional services to the satisfaction of the City Engineer in accordance with the terms of this Agreement with the degree and with the care and skill that a registered professional in Arizona in Consultant's industry would exercise under similar conditions. The Consultant may discuss the Project or its requirements with the department that will ultimately use the facility, but all specific project direction or requests must be authorized by the City Engineer.
- 5.2. Consultant must provide the following to City in their proposal as **ATTACHMENT 1**:
- 5.2.1. Scope of Work / Fee Proposal
 - 5.2.2. Subconsultant Information
 - 5.2.3. Hourly Billable Rates
 - 5.2.4. Project Schedule
- 5.3. Consultant must complete the work under this Agreement in accordance with the project schedule, attached and incorporated in **ATTACHMENT 1**.

- 5.4. Consultant must prepare all documents and materials according to the City's standards, scope, and budget, subject to the City Engineer's general inspection.
- 5.5. The documents prepared by the Consultant must not exceed the budget without express written approval from the City. The consultant, at the option of the City and without additional expense to the City, must without delay revise documents in a manner satisfactory to the City in an amount not exceeding the allocated budget.
- 5.6 City's Project Management Information System
 - 5.6.1 The Consultant is required to maintain all Project records in electronic format. The City provides an Application Service Provider (ASP) web-based project management database which the Consultant shall utilize in the fulfillment of the Contract requirements.
 - 5.6.2 The Consultant shall use this ASP to process all documents related to the Work, including, but not limited to: requests for interpretation/information, change orders, design meeting minutes and submittals.
 - 5.6.3 The Consultant shall process all Project information in electronic digital format. To fulfill this requirement, the Consultant shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to the web-based ASP and transfer electronic data.
 - 5.6.4 The Consultant shall provide a computerized networked office platform with broadband internet connectivity. Either wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City's ASP system.
 - 5.6.5 Training will be provided through the City. Contact information will be provided to the firms under contract, to establish the set up with a log-in and password.

SECTION 6 – DEFINITIONS

AGREEMENT (OR CONTRACT):

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

AMENDMENT:

See "Contract Amendment" definition.

APPLICABLE LAW:

Any law, rule, codes, standards, regulation, requirement, policy, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued by, any governmental body having jurisdiction, applicable from time to time to any activities associated with this Agreement, including but not limited to design, construction and permitting or any other transaction or matter

contemplated hereby, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of prevailing wages.

A.R.S.:

Arizona Revised Statutes.

CERTIFICATE OF INSURANCE:

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

CITY:

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

CONSULTANT OR CONTRACTOR:

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

CONTRACT (OR AGREEMENT):

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

CONTRACT AMENDMENT:

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

DAY(S):

Calendar Days unless otherwise specifically noted.

DEPARTMENT:

Department means the City Department overseeing the Agreement.

EFFECTIVE DATE OF THE AGREEMENT:

The date indicated in the Agreement on which it becomes effective.

NOTICE TO PROCEED:

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

PAYMENT REQUEST:

Payment Request is a request from the Consultant for a progress or final payment on the prescribed form and includes all information required to be submitted with the form to substantiate the Consultant's right to payment, and must be submitted in the format specified by the City.

SUBCONTRACT:

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

SUBCONSULTANT:

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

SECTION 7 – GENERAL CONDITIONS

7.1. INSURANCE AND INDEMNIFICATION REQUIREMENTS:

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

7.2. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER:

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

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

7.3. LEGAL WORKER REQUIREMENTS:

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

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

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

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

7.4. CONFIDENTIALITY AND DATA SECURITY:

- 7.4.1. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as specifically provided in this Agreement, the Consultant shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.
- 7.4.2. Consultant agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.
- 7.4.3. Consultant agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.
- 7.4.4. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

7.5. PROJECT DOCUMENT AND COPYRIGHTS:

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

course of performing this Contract or arising out of the Work will belong to the Consultant.

7.5.3. License to City for Reasonable Use With this Contract, the Consultant and its subconsultants hereby grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of the Work and this Contract. This license also includes the making of derivative works.

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

7.6. BACKGROUND SCREENING:

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

7.7. CONTACTS WITH THIRD PARTIES:

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

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

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

7.8. RECORDS / AUDIT:

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

available to City for at least five years following Final Acceptance.

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

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

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

7.9. COMPLIANCE WITH LAWS:

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

7.10. ALTERATION IN CHARACTER OF WORK:

Whenever a change in the scope of work results in a substantial revision to this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, an Agreement Amendment shall be approved and executed by the City and the Consultant.

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

7.11. INTEGRATION:

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

7.12. GOVERNING LAW; FORUM; VENUE:

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

7.13. TERMINATION OR SUSPENSION OF SERVICES:

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

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

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

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

7.14. SPECIFIC PERFORMANCE:

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

7.15. FORCE MAJEURE:

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

7.16. DOCUMENTATION:

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

7.17. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:

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

7.18. CONFLICTS OF INTEREST:

- 7.18.1. Consultant acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.
- 7.18.2. The City reserves the right to immediately terminate the contract in the event that the City determines that Consultant has an actual or apparent

conflict of interest.

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

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

7.19. NOTICE:

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

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

7.20. PUBLIC RECORDS:

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

7.20.2. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which will be deemed given when deposited by the City with the USPS for regular delivery to the address of the

Consultant specified in this Agreement. Within ten calendar days of notice from the City, the Consultant must inform the City in writing of any objection by the Consultant to the disclosure of the requested information. Failure by the Consultant to object within ten calendar days of notice will be deemed to waive any objection and any remedy against the City for disclosure.

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

7.21. CLAIMS OR DEMANDS AGAINST THE CITY:

- 7.21.1. Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Consultant agrees to adhere to the prescribed procedure for presentation of claims and demands.
- 7.21.2. Pursuant to Phoenix City Charter Chapter 18, the City reserves the right to withhold funds from the Consultant's progress payments up to the amount equal to the claims the City may have against the Consultant until such time that a settlement on those claims has been reached.
- 7.21.3. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.
- 7.21.4. Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

7.22. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:

Consultant waives any claims against the City and its officers, officials, agents

and employees for loss of anticipated profits caused by the termination, a legal proceeding, or a business decision by the City, directly or indirectly, involving any part of this Agreement.

7.23. DISPUTES:

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

7.24. THIRD PARTY BENEFICIARY CLAUSE:

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

7.25. LAWFUL PRESENCE REQUIREMENT:

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

7.26. EQUAL EMPLOYMENT OPPORTUNITY:

- 7.26.1. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

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

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

7.27. SUCCESSORS AND ASSIGNS:

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

7.28. CONSULTANT'S DUTY OF CARE:

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

7.29. PROJECT STAFFING:

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

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

7.30. SUBCONSULTANTS:

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

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

7.31. NON-WAIVER PROVISION:

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

7.32. SURVIVAL:

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

7.33. SEVERABILITY:

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

7.34. TIME IS OF THE ESSENCE:

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

7.35. DATE OF PERFORMANCE:

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

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

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

7.36.1. All Work performed within the City's Right-of-Way by the Consultant and

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

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

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

7.37. CONTRACT AMENDMENTS:

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

7.38. REQUEST FOR CONTRACT ADJUSTMENTS AND RELIEF:

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

Such notice will, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 7 Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

Such notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

7.39. REPRESENTATIVES OF THE PARTIES:

City's Representatives

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

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

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

Consultant's Representatives

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

Name, Title
Firm Name
Address
City, Arizona 85XXX

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

7.40. NOTICES:

General Notices

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

7.41. NO ISRAEL BOYCOTT:

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

7.42 NO FORCED LABOR OF UYGHURS:

If this Contract requires Consultant (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Consultant must certify and agree that it and any consultants, subconsultants, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of

China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Consultant, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any consultants, subconsultants, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

7.43 HEAT MITIGATION:

7.43.1 Per Phoenix City Code G-7241, effective April 25, 2024, any Consultant whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

7.43.1.1 Availability of sanitized cool drink water free of charge at locations that are accessible to all employees and contract workers.

7.43.1.2 Ability to take regular and necessary breaks as needed and additional breaks for hydration.

7.43.1.3 Access to shaded areas and/or air conditioning.

7.43.1.4 Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.

7.43.1.5 Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.

7.43.1.6 Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

7.43.2 The Consultant further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Consultant agrees to require all subconsultants, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Consultant to ensure compliance by its subconsultants.

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

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

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

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

By: _____
Name of Signatory, Title

ATTEST:

City Clerk

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

By: _____

DRAFT

EXHIBIT A

INSURANCE AND INDEMNIFICATION REQUIREMENTS

1. DEFENSE AND INDEMNIFICATION CLAUSE:

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

Environmental Services or Operations

Use in environmental service contracts if the scope of services or operations includes generating, transporting, treating, storing, removing or disposing of hazardous materials, petroleum products or chemicals, the contractor can be held liable for damaging the environment if an accident were to occur.

NOTE: Use the following indemnification language IN ADDITION to the indemnification clause listed above. The environmental indemnification clause shown below should be added as a second paragraph after the primary indemnification clause.

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 demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney fees, expert fees, and reasonable expenses of investigation and remedial work (including but not limited to investigations and remediation by engineers, environmental consultants

and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as “Losses”) to the extent that such Losses are caused by the fault of Indemnitor, its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. 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. As used in this section: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) “Fault” means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). 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. CONSULTANT’S INSURANCE:

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

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

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

2.1.1. Commercial General Liability – Occurrence Form

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

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

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

2.1.2. Automobile Liability

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

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

2.1.3. Worker’s Compensation and Employers’ Liability

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

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

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

2.1.4. Professional Liability (Errors and Omissions Liability)

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

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

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

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

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

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

Each registered subconsultant will carry:

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

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

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

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

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

All other registered subconsultants not listed above will carry:

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

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Agreement, the Consultant must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand

delivered to **Design and Construction Procurement, 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003.**

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

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

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

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

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

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

EXHIBIT B

BACKGROUND SCREENING REQUIREMENTS

1. BACKGROUND SCREENING:

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

- 1.1 **Background Screening Risk Level:** The City has established two levels of risk: Standard and Maximum risk. The current risk level and background screening required is **[N/A // STANDARD RISK LEVEL // MAXIMUM RISK LEVEL]**. If the scope of work changes, the City may amend the level of risk, which could require the Consultant to incur additional contract costs to obtain background screens or badges.
- 1.2 **Terms of This Section Applicable to all Consultant's Contracts and Subcontracts:** Consultant will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.
- 1.3 **Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Consultant will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Consultant. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Consultant from any liabilities that may arise out of the Consultant's services under this Agreement or Consultant's failure to comply with this section. Therefore, Consultant and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.
- 1.4 **Continuing Duty; Audit:** Consultant's obligations and requirements will continue throughout the entire term of this Agreement. Consultant will maintain all records and documents related to all background screenings and the City reserves the right to audit Consultant's records.

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

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

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

Unless otherwise provided for in the scope of work:

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

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

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

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

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

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

CHOOSE STANDARD OR MAXIMUM SCREENING

2. BACKGROUND SCREENING – STANDARD RISK:

The current risk level and background screening required is **STANDARD RISK LEVEL.**

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

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

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

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

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

INCLUDE below for MAXIMUM risk. For further information regarding CJIS requirements, vulnerable adult or children - see A.R. 4.45.

3. BACKGROUND SCREENING – MAXIMUM RISK:

3.1 The current risk level and background screening required is **MAXIMUM RISK.**

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

- work directly with vulnerable adults or children, (under age 18); or

- any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- unescorted access to:
 - City data centers, money rooms, high-value equipment rooms; or
 - unescorted access to private residences; or
 - access to critical infrastructure sites/facilities; or
 - direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

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

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

- determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- submitting pass/fail results to the City for approval; and,
- reviewing the results of the background check every three to five years, dependent on scope; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department; and,
- If, upon review of the background information, the City will advise the Consultant if it believes a Contract Worker should be disqualified. The Consultant will evaluate the Contract Worker and if the Consultant believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Consultant will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- For sole proprietors, the Consultant must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Consultant certifies and warrants that Consultant has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- The City final documented decision will be an "approve" or "deny" for identified Contract Workers.
- The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Consultant,

or any contracted agency that assists with review, after the City's completed review.

- By executing this agreement, Consultant further certifies and warrants that Consultant has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Consultant has received the City's written acceptance of Contract Worker's maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Consultant for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city's prior written approval.

The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the **Department name** at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by **Department name**. A designated **Department name** S representative will conduct the security check.

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

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

Use this for Scopes NOT involving PII or PCI, or financial information (or delete).

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

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

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

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

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EXHIBIT C

TRAVEL REIMBURSEMENT PROCEDURE

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EXHIBIT D

DEPARTMENT SPECIFIC REQUIREMENTS

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EXHIBIT E

SBE/DBE REQUIREMENTS

NOT USED

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EXHIBIT F

SUPPLEMENTAL TERMS AND CONDITIONS

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ATTACHMENT 1

SCOPE OF SERVICES / FEE PROPOSAL

PROPOSAL MUST INCLUDE A SCHEDULE

DRAFT

ATTACHMENT 2

BILLABLE RATES

FIRM HOURLY BILLABLE RATES

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

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ATTACHMENT 3
INSURANCE CERTIFICATES

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