



City of Phoenix

REQUEST FOR PROPOSAL - PROFESSIONAL
SERVICES

RFP 24-0387

FLEXIBLE SPENDING ACCOUNT (FSA)
ADMINISTRATION SERVICES

City of Phoenix
Finance Central Procurement
251 W. Washington Street
Phoenix, AZ
85003

RELEASE DATE: August 9, 2024

DEADLINE FOR QUESTIONS: August 21, 2024

RESPONSE DEADLINE: August 30, 2024, 2:00 pm

City of Phoenix
REQUEST FOR PROPOSAL - PROFESSIONAL SERVICES
RFP 24-0387
Flexible Spending Account (FSA) Administration Services

1. INSTRUCTIONS	4
1.1. Introduction	4
1.2. Description – Statement of Need	4
1.3. Minimum Qualifications	5
1.4. Agreement Term and Contractual Relationship.....	5
1.5. Scope of Work and Special Terms and Conditions	6
1.6. City’s Vendor Self-Registration and Notification	6
1.7. Preparation of Offer	6
1.8. Exception	7
1.9. Inquiries	7
1.10. Addenda.....	8
1.11. Licenses	8
1.12. Certifications	8
1.13. Submission of Offer	8
1.14. Withdrawal of Offer.....	9
1.15. Offer Results	9
1.16. Pre-Award Qualifications	9
1.17. Award of Contract.....	10
1.18. City's Right to Disqualify for Conflict of Interest	10
1.19. Solicitation Transparency Policy	11
1.20. Protest Process	12
1.21. Public Record	13
1.22. Late Offers	13
1.23. Right to Disqualify	13
1.24. Statement of Bonding Ability.....	13
1.25. Performance Bond	14
1.26. Contract Award.....	14
1.27. Evaluation of Competitive Sealed Offers	14
1.28. Determining Responsiveness and Responsibility	14

1.29. Detailed Evaluation of Offers and Determination of Competitive Range 15

1.30. Offers Not Within the Competitive Range 15

1.31. Discussions with Offerors in the Competitive Range 15

1.32. Best and Final Offers (BAFO)..... 16

1.33. Fixed Offer Price Period 16

1.34. Obtaining a Copy of the Solicitation and Addenda 16

1.35. Business in Arizona 16

1.36. Evaluation Criteria 17

2. AGREEMENT 18

2.1. Professional Services Agreement 18

2.2. Term of Agreement 18

2.3. Payment 19

2.4. Exhibit A – Scope of Work 19

2.5. Exhibit B - Fee Schedule..... 19

2.6. Standard Terms and Conditions..... 19

2.7. Special Terms and Conditions 35

2.8. Defense and Indemnification..... 45

2.9. Insurance Requirements 46

3. SUBMITTALS 50

3.1. Submittals 50

3.1.2. Copies 51

Attachments:

- A - Exhibit A - Scope of Work (Flexible Spending Account)
- B - Exhibit B - Fee Schedule (Flexible Spending Account)
- C - Exhibit C - Business Associate Agreement (BAA)
- D - Appendix 1 - City of Phoenix FSA Metrics
- E - Submittal E - Submittal Instructions and Evaluation
- F - Submittal F - Offer Signature Page
- G - Submittal G - Conflict of Interest and Transparency
- H - Submittal H - Costs and Payments
- I - Submittal I - Reference(s) form
- J - Attachment 14 - Questionnaire (Flexible Spending Account)
- K - Attachment 15 - Financial Template (Fee Schedule)

1. INSTRUCTIONS

1.1. Introduction

1.1.1. Summary

The City of Phoenix, Human Resources Department is seeking to enter into an agreement with a qualified Contractor to provide Flexible Spending Account Administration Services for a five-year period effective January 1, 2026.

1.1.2. Contact Information

Margie Vasquez

Finance Procurement Manager
251 W. Washington Street, 8th Floor
Phoenix, Arizona 85003
Email: margie.vasquez@phoenix.gov
Phone: [\(602\) 262-7794](tel:(602)262-7794)

Department:

Finance Central Procurement

1.1.3. Timeline

Release Project Date	August 9, 2024
Pre-Proposal Meeting (Non-Mandatory)	August 20, 2024, 10:00am WEBEX Meeting: Pre-Proposal Meeting Link
Question Submission Deadline	August 21, 2024, 2:00pm
Question Response Deadline	August 1, 2024, 5:00pm
Proposal Submission Deadline	August 30, 2024, 2:00pm

1.2. Description – Statement of Need

The City of Phoenix invites sealed offers for Flexible Spending Account (FSA) Administration Services for a fiveyear period commencing on or about January 1, 2026 or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later, in accordance with the Minimum Qualifications, the Scope of Work in the Professional Services Agreement and the additional specifications and provisions contained herein.

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

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

It is the intent of this Solicitation to award one or more than one contract; however, the City reserves the right to award the Contract(s) to whomever best meets the criteria set out in this Solicitation.

1.3. Minimum Qualifications

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

- Have been in operation for a minimum of five (5) consecutive years' providing Flexible Spending Account Administration Services as set forth in the Scope of Work.
- Have a minimum of five (5) consecutive years' experience providing the Services as listed in this Solicitation for private and public entities comparable in size to the City of Phoenix.
- The Offeror must be lawfully authorized to conduct business in Arizona or must have no impediments to conducting business in Arizona.
- Submit a letter from a licensed bonding or insurance agency stating that the Offeror can qualify for and procure the performance bond and/or payment surety required in Section I, Paragraph 1.24 Statement of Bonding Ability.
- Provide a statement confirming your firm agrees to execute Exhibit C - Business Associate Agreement (BAA).

1.4. Agreement Term and Contractual Relationship

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

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

1.5. Scope of Work and Special Terms and Conditions

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

1.6. City’s Vendor Self-Registration and Notification

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

1.7. Preparation of Offer

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

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

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

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

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

- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that Offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.

1.8. Exception

If an Offeror has any exceptions to any terms, conditions or material requirements of this Solicitation including without limitation to the Professional Services Agreement and the Scope of Work, the Offeror must include a list of all exceptions to the requirements of the Solicitation and attachment documents, if any, stated on a separate page labeled "Exceptions Statement."

- Clearly reference the solicitation provision (ie title, paragraph number and page number)
- Redline the City's provision and provide alternate language
- Offeror must explain the reason for the requested change

Note: The preferred method would be to receive an Excel spreadsheet with the following columns: 1) RFP Section, Provision number and Title and page number, 2) Copy of City's provision, 3) City's provision with proposed redlines/changes, and 4) explanation/justification for requested change

If Offeror's Submittal does not include a separate Exceptions Statement identifying all specific exceptions, the exceptions will be deemed waived by the Offeror.

It is the intent of the City to award a contract on a fair, competitive basis. For this reason, the City may view any "Exception" in response to any material conditions or requirement of the solicitation, as an attempt by the Offeror to vary the terms of the solicitation which, in fact, may result in giving the Offeror an unfair advantage. For this reason, the City will, at its option, not allow exceptions to any material requirement if, in the opinion of the City, the exceptions alter the overall intent of the solicitation, unless the exception would be of material benefit to the City. Additionally, the City may, at its option, deem any submittal non-responsive based on exceptions by the Offeror.

1.9. Inquiries

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

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

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

1.10. Addenda

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

1.11. Licenses

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

1.12. Certifications

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

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

1.13. Submission of Offer

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

1. The City of Phoenix will ONLY accept Offers electronically for this RFP process. Offerors may not submit hardcopies for this Solicitation.
2. Offers must be submitted electronically by email to procurement@phoenix.gov and the following information should be noted in the submission email:
 1. Email Subject Line: "Solicitation number and Title" Submittal for "Company Name"
 2. Contents in the Email body:
 - a. Offeror's Name
 - b. Offeror's Address (as shown on the Certification Page)
 - c. Solicitation Number
 - d. Solicitation Title
 - e. Offer Opening Date

- f. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Timeline.
- g. It is the responsibility of the Offeror to ensure that the Offer is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the upload as received/stamped by the City's file transfer site will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Timeline.

1.14. Withdrawal of Offer

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

1.15. Offer Results

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

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

1.16. Pre-Award Qualifications

Upon notification of an award, but before finalization of the award, the Offeror will have fourteen (14) business days to submit a complete certificate of insurance in the minimum amounts and the

coverages as required in the Insurance Requirements of this Solicitation. Insurance and Indemnification requirements are non-negotiable.

Upon notification of an award, but before the finalization of the award, the Offeror will have fourteen (14) calendar days to submit the bonding requirements.

If the requirements of the paragraphs above are not met, the City at its option may deem the Offeror's Offer non-responsive and award the contract to another Offeror.

1.17. Award of Contract

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

A. Factors that may be considered by the City include:

1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
3. Safety record; and,
4. Offeror history of complaints and termination for convenience or cause.

B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

C. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. The City requires formal signing of a separate Professional Services Consultant agreement, to include the Standard Terms and Conditions, Special Terms and Conditions, all of the terms, conditions and specifications contained in this solicitation, and in any addendum.

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

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

1.19. Solicitation Transparency Policy

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

1.20. Protest Process

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

1.21. Public Record

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

1.22. Late Offers

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

1.23. Right to Disqualify

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

1.24. Statement of Bonding Ability

Offerors must submit a letter from a bonding or insurance company stating that the Offeror can qualify for and procure the performance and/or payment surety required in this solicitation. Submittals received without the required statement of ability to secure a performance or payment surety may be considered as non-responsive. Offerors anticipating the submittal of a cash surety in lieu of a bond should submit a statement notifying the City.

1.25. Performance Bond

A performance surety in the amount of 10% of the total contract amount shall be provided by the Contractor immediately after notice of award and no later than 14 calendar days. The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Procurement Officer. The performance surety must be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. If surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor, and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.

1.26. Contract Award

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

1.27. Evaluation of Competitive Sealed Offers

The City will use its discretion in applying the following processes to this solicitation. Evaluation will be conducted in accordance with the Evaluation Criteria.

1.28. Determining Responsiveness and Responsibility

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

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

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

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

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

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

1.29. Detailed Evaluation of Offers and Determination of Competitive Range

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

1.30. Offers Not Within the Competitive Range

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

1.31. Discussions with Offerors in the Competitive Range

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

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

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

nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

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

1.32. Best and Final Offers (BAFO)

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

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

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

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

1.33. Fixed Offer Price Period

All Offers shall be firm and fixed for a period of 240 calendar days from the solicitation opening date.

1.34. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Finance Department, Central Procurement Division, 251 W Washington Street, 8th Floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

1.35. Business in Arizona

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

1.36. Evaluation Criteria

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

Qualifications, Experience and References	250 POINTS
Method of Approach	400 POINTS
Pricing	350 POINTS
TOTAL AVAILABLE POINTS:	1000 Maximum

2. AGREEMENT

2.1. Professional Services Agreement

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

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

RECITALS

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

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

2.2. Term of Agreement

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

2.3. Payment

- A. The total amount to be remitted by the City to Contractor for all Services satisfactorily performed under this Agreement will not exceed the aggregate amount of \$Enter amount including all reasonable and necessary expenses, if approved in advance by the City and included in the Fee Schedule EXHIBIT B. Under this Agreement, the City will pay for Services at the rate(s) specified in the Fee Schedule and that comply with the requirements for Reimbursable Expenses as outlined below, with no additional charges for overhead, benefits, local travel or administrative support. Payments will be made in proportion to the Services performed and no more than 90% of the total contract price will be paid before the work is totally completed and accepted by the City.
- B. Contractor will submit monthly invoices on or before the 10th calendar day of every month. Each invoice will be accompanied with itemized receipts. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation will be provided that supports the charges reflected in the monthly invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to the Contractor. Contractor will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.
- C. Invoices will be submitted to: City of Phoenix Human Resources Department, Benefits Division Staff:

Brianna.Aceves@phoenix.gov

Tristin.Sullivan-Leppa@phoenix.gov

Benefits.Invoices@phoenix.gov

2.4. Exhibit A – Scope of Work

This section is intentionally left blank. Refer to Exhibit A.

2.5. Exhibit B - Fee Schedule

This section is intentionally left blank. Refer to Exhibit B.

2.6. Standard Terms and Conditions

2.6.1. Definition of Key Words Used in the Solicitation

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

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

May: Indicates something that is not mandatory but permissible.

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

“A.R.S.” Arizona Revised Statute

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

“City” The City of Phoenix

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

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

“Days” Means calendar days unless otherwise specified.

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

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

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

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

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

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

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

2.6.2. *Contract Interpretation*

- A. **Applicable Law:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
 - 1. Professional Services Agreement Standard terms and conditions
 - 2. Special terms and conditions
 - 3. Insurance and Indemnification Terms and Insurance Certificate
 - 4. Statement or scope of work and Fee Schedule
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- D. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- E. **Non-Waiver of Liability:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant

to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

- G. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- H. **Facsimile or Electronic Signature:** Either or all parties may execute this Agreement by facsimile or other scanned or electronic signature, and any such facsimile or other scanned or electronic signature shall be deemed an original signature.

2.6.3. Contract Administration and Operation

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **Discrimination Prohibited:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **Equal Employment Opportunity and Pay:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

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

4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **Legal Worker Requirements:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
 2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **Compliance with Laws:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.
- F. **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.
- G. **Continuation During Disputes:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction. 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.

2.6.4. Governing Law; Forum; Venue

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

2.6.5. Audit/Records

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

2.6.6. Independent Contractor Status; Employment Disclaimer

- A. The parties agree that Contractor is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractors. Neither Contractor nor any of Contractor's agents, employees or helpers will be deemed to be the employee, agent, or servant of the City. The City is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Contractor.
- B. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Contractor will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules will accrue to such individual. Contractor will have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and will save and hold harmless the City with respect thereto.

2.6.7. Costs and Payments

- A. **Commencement of Work.** The Consultant is cautioned not to commence any billable work or provide any material or service under this Agreement until Consultant receives a fully executed contract document or otherwise directed to do so, in writing by the City.

- B. **Late Submission of Claim by Contactor.** The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
- C. **No Advance Payments.** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.
- D. **Fund appropriation Contingency.** The Consultant recognizes that this Agreement shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Consultant and the City herein recognize that the continuation of any Agreement after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- E. **IRS W9 Form.** In order to receive payment, the Consultant shall have a current IRS W-9 form on file with the City of Phoenix. The form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

2.6.8. *Contract Changes*

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

such named individual(s) sever their relationship with Consultant, or otherwise be unavailable to carry out Consultant's duties under this Agreement for a period of time deemed to be excessive by the City in its sole and absolute discretion, then the City may, without notice, immediately terminate this Agreement for cause.

- C. **Non-Exclusive Contract:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

2.6.9. *Risk of Loss and Liability*

- A. **Title and Risk of Loss:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- B. **Acceptance:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. Contractor will not be responsible or liable for, or deemed in breach hereof because of any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including but not limited to fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Contractor in connection with the Services and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter referred to as "Force Majeure").
- D. **Loss of Materials:** If applicable, the City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **Contract Performance:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the

agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

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

2.6.10. City's Contractual Rights

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

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

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

2.6.11. *Contract Termination*

- A. **Gratuities:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- B. **Conditions and Causes for Termination:**
 - 1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
 - 2. Immediately upon receiving a written notice to terminate or suspend Services, Contractor will:
 - Discontinue advancing the work in progress, or such part that is described in the notice.
 - Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
 - Appraise the work it has completed and submit its appraisal to the City for evaluation.

- Be paid in full the pro rata value for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.
3. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
 - In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
 - In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;
 - Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
 - In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.
- C. **Final Payment:** The City shall make final payment for all Services performed and accepted within sixty (60) days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement.
- D. **Temporary Suspension.** The City may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and such additional expense is not due to fault or negligence of Consultant, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.
- E. **Contract Cancellation:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

2.6.12. Notice

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

If to Contractor:

Legal name and address of contractor.

If to City:

City of Phoenix - Human Resources Department
Benefits Division
251 W. Washington Street, 7th Floor
Phoenix, Arizona 85003
Telephone: (602) 262-4777

Debra Payan, HR Benefits & Wellness Administrator
Debra.Payan@phoenix.gov

Tristin Sullivan-Leppa, Deputy Director
Tristin.Sullivan-Leppa@phoenix.gov

Notice will be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent by facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

2.6.13. Integration

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

2.6.14. Conflicts of Interest

- A. Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise

of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

- B. The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.
- C. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.
- D. This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

2.6.15. Waiver of Claims for Anticipated Profits

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

2.6.16. State and Local Transaction Privilege Taxes

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

2.6.17. Tax Indemnification

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

2.6.18. Tax Responsibility Qualification

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

2.6.19. No Israel Boycott

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

2.6.20. No Forced Labor of Ethnic Uyghurs

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

2.6.21. Advertising

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

2.6.22. Release of Information – Advertising and Promotion

Contractor 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 Contractor without the prior written consent of the City.

2.6.23. Strict Performance

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

2.6.24. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

2.6.25. Claims or Demands Against the City

- A. Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

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

2.6.26. No Third-Party Beneficiaries

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

2.7. Special Terms and Conditions

2.7.1. Term of Contract

The term of this Contract will commence on or about January 1, 2026 and will continue for a period of five (5) years thereafter.

2.7.2. Price

All prices offered shall be firm and fixed for the entire term of the contract.

2.7.3. Method of Ordering

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

2.7.4. Method of Invoicing

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

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

2.7.5. Supplier Profile Changes

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

2.7.6. Suspensions of Work

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

2.7.7. Post Award Conference

A post-award conference will be held prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

2.7.8. Performance Interference

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

2.7.9. Cooperative Agreement

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

2.7.10. Exclusive Possession

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

2.7.11. Licenses and Permits

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

2.7.12. Contacts with Third Parties

- A. Contractor or its subcontractors will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Contractor or its subcontractors will promptly inform the City giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of the City or

court order. The obligations of Contractor and its subcontractors under this Section will survive the termination of this Agreement.

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

2.7.13. Fiscal Year Clause

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

2.7.14. Final Payment

- A. **PAYMENT:** The City will make final payment for all Services performed and accepted within 60 days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Contractor will be at the City's sole risk for such use.
- B. **TEMPORARY SUSPENSION:** The City may, by written notice, direct Contractor to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Contractor in performance, and not due to fault or negligence of Contractor, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Contractor for a price adjustment must be supported by appropriate documentation asserted promptly after Contractor has been notified to suspend performance.

2.7.15. Professional Competency

- A. **QUALIFICATIONS:** Contractor represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.
- B. **LEVEL OF CARE AND SKILL:** Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Contractor's profession currently practicing in the same industry under similar conditions.

Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

2.7.16. Specific Performance

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

2.7.17. Documentation

- A. **DISSEMINATION AND RETENTION:** There will be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Contractor will relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Contractor pending the resolution of the existing or anticipated litigation.
- B. **FORMAT AND QUALITY:** All documents prepared by Contractor will be prepared in a format and at a quality approved by the City.
- C. **DOCUMENT REVIEW:** Contractor will review all documents provided by the City related to the performance of the Services and will promptly notify the City of any defects or deficiencies discovered in such review.
- D. **SUBMITTALS:** Contractor will provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as such become available to the City for review.

2.7.18. Public Records

- A. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Contractor acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Contractor understands that disclosure of some or all of the items subject to this Agreement may be required by law.
- B. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, the City agrees to provide the Contractor with notice of that request, which shall be deemed given

when deposited by the City with the USPS for regular delivery to the address of the Contractor specified in their proposal. Within ten days of City notice by the City, the Contractor will inform the City in writing of any objection by the Contractor to the disclosure of the requested information. Failure by the Contractor to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.

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

2.7.19. Background Screening

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

2.7.20. Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

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

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

2.7.22. Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that

these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

2.7.23. Continuing Duty; Audit

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

2.7.24. Background Screening – Maximum Risk

- A. **Determined Risk Level:** The current risk level and background screening required is MAXIMUM RISK.
- B. **Maximum Risk Level:** A maximum risk background screening will be performed every **five** years when the Contract Worker's work assignment will:
 - 1. work directly with vulnerable adults or children, (under age 18); or
 - 2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
 - 3. unescorted access to:
 - a. City data centers, money rooms, high-value equipment rooms; or
 - b. unescorted access to private residences; or
 - c. access to critical infrastructure sites/facilities; or
 - d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.
- C. **Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

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

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

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,

- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- G. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- H. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.

2.7.26. Confidentiality

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

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

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

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

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys’ fees,

damages or proceedings arising out of Contractor's breach of this Section (Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

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

2.7.27. Data Protection

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

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

- A. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
 1. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;
 2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the

- Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
 4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
 5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
 6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
 7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;
- B. If the Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
 2. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and
4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

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

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

2.7.28. Title

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

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

2.8. Defense and Indemnification

Contractor ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontracts ("Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered

under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

2.9. Insurance Requirements

2.9.1. Consultant's Insurance

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

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

2.9.2. Scope and Limits of Insurance

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

2.9.3. Commercial General Liability – Occurrence Form

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

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Consultant related to this Contract.

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

2.9.4. Automobile Liability

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

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

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

2.9.5. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

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

2.9.6. Professional Liability (Errors and Omissions Liability)

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

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

- Consultant warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.9.7. Network Security and Privacy Liability (required if Contractor has access to personal or confidential data)

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

- Policy must cover but not be limited to (1) coverage for third party claims and losses with respect to network risk and invasion of privacy (2) crisis management and third-party identity theft response costs and (3) cyber extortion.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.9.8. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Consultant must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Phoenix Finance Department, Procurement Division, 251 W Washington Street, Phoenix, AZ 85003 OR procurement@phoenix.gov.

2.9.9. 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.

2.9.10. Verification of Coverage

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

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

All certificates required by this Contract must be sent directly to City of Phoenix Finance Department, Procurement Division, 251 W Washington Street, Phoenix, AZ 85003 OR

procurement@phoenix.gov. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

2.9.11. Subconsultants

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

2.9.12. Approval

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

3. SUBMITTALS

3.1. Submittals

3.1.1. AFFIDAVIT

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

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

- A. The City is relying on Offeror's submitted information and the representation that Offeror has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
- B. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Offeror
- C. Offeror has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
- D. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any Offeror errors or omissions.
- E. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
- F. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
- G. This proposal is valid for a minimum of 240 days after the RFP proposal deadline.
- H. All costs incurred by Offeror in connection with this proposal shall be borne solely by Offeror. Under no circumstances shall the City be responsible for any costs associated with Offeror's proposal or the RFP process.
- I. Offeror has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
- J. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
- K. To the best of the Offeror's knowledge, the information provided in its proposal is true and correct and neither the undersigned Offeror nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

3.1.2. Copies

Please submit one original, one copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the electronic copy with password protection so that the CITY may digitally incorporate the successful Offer into the awarded contract.

Please submit only the Submittal Section, do not submit a copy of the entire solicitation document. This Offer will remain in effect for a period of 240 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release Offer(s).

EXHIBIT A – SCOPE OF WORK

1. INTRODUCTION AND BACKGROUND

- 1.1 Phoenix is Arizona’s capital and the fifth largest city in the United States with a workforce of more than 15,000 employees. Phoenix is also the largest city in the United States with a council-manager form of government.

The City’s Human Resource Department is responsible for managing a full range of workforce services to include benefits and wellness, compliance and HR technology, to name a few. The City is a public employer that provides a comprehensive benefits package to 20,000 full and part time employees and eligible family members (individually referred to as “Eligible Employees”, and “Eligible Dependents” collectively referred to herein as “Participants”).

- 1.2 The City of Phoenix seeks to contract with a qualified vendor to provide administrative services for the following programs:

1.2.1 Section 125 Cafeteria Plan

1.2.1.1 Health Care Flexible Spending Account (FSA);
general and limited purpose

1.2.1.2 Dependent Care FSA

1.2.1.3 Section 125 Cafeteria Plan Non-Discrimination
Testing

1.2.2 The additional services below:

1.2.2.1 Claims processing and reimbursement

1.2.2.2 Compliance assistance

1.2.2.3 Consultation services regarding the Internal Revenue
Code and regulations that apply to the cafeteria plans

1.2.2.4 Designated Customer Service

1.2.2.5 Enrollment and eligibility actions

1.2.2.6 Pre and Post Implementation

1.2.2.7 Proactive account management

1.2.2.8 Ongoing member communication and education
initiatives

1.2.2.9 Reporting – monthly, quarterly, and annually

- 1.3 Contractor shall ensure a seamless, accurate and effectual transition of services; support all applicable policies and regulations; and promote efficiency, accuracy and superior customer experience for the Plan

and the program Participants by providing state-of-the art business tools, processes and services.

- 1.4 The FSA is currently administered by Optum Financial. The City offers Health and Dependent Care accounts as well as a Limited Purpose FSA account to Participants enrolled in the City's High Deductible Health Plan with a Health Savings Account.

The current employee benefits program includes Medical HMO, PPO and HDHP with HSA, Pharmacy, Dental, and Voluntary Vision. The City on average has 2,000 FSA enrollments each plan year.

- 1.5 The City shall provide an electronic participation weekly file feed; direct participant questions to FSA Administrator; coordinate with the Contractor of any audits, reviews, and data collection; have financial authority to decide all questions, including any exception requests.

2. **DEFINITIONS**

- 2A.1 **Designated Teams** - means persons trained on the City's benefits and assigned by the Contractor to service the City account. Persons assigned to perform Implementation and/or Account Management Services.
- 2A.2 **Effective Date** – means the day the Contract and Business Associate Agreement begins.
- 2A.3 **Eligible Employee** – means active full-time, job-share, and benefits eligible part-time City employees or any other person the City determines to be eligible including without limitation employees on approved leave of absence due to FMLA (paid or unpaid), LTD, ADA, USERRA, FEMA, or any person eligible for continuation of coverage.
- 2A.4 **Eligible Dependents** are defined by the City as:
 - 2A.4.1 A legally married spouse, regardless of gender
 - 2A.4.2 A Qualified Domestic Partner (QDP), regardless of gender, approved through City of Phoenix QDP affidavit.
 - 2A.4.3 Children to age 26, including biological child; an adopted child or child placed for adoption; a stepchild who the employee is married to or has an active Qualified Domestic Partnership with the child's parent; and children for whom the employee has legal guardianship or legal custody; and
 - 2A.4.4 Children aged 26 and older provided the child had existing coverage as an eligible dependent and the child has a long-term or permanent disability that makes the child incapable of self-sustaining employment.
- 2A.5 **Participants** means Eligible Employees, and Dependents.

- 2A.6 **Plan Year** means the 12-month period of benefits coverage under a group health plan which begins January 1 and ends on December 31.
- 2A.7 **Qualified Life Event** – or (QLEs) describe events deemed acceptable by the IRS that may allow Participants to change their participation election for health coverage outside of Open Enrollment. within a 31-day or 60-day window. QLEs include but are not limited to: Marriage, Divorce, Annulment, Death of a Spouse, Birth, Adoption, Placement for Adoption, Legal Guardianship, Change in Legal Custody, Becoming Covered in Other Group Insurance.
- 2A.8 **Services-** means the work required of the Contractor by this Agreement and the Scope of Work incorporated therein.
- 2A.9 **Subcontractor or Assignee** – means any vendor or group of individuals who are not employed by the Contractor but perform Services on behalf of the Contractor for the City.

2. **ACRONYMS**

- 2B.1 ACA – Affordable Care Act
- 2B.2 ASO – Administrative Services Only
- 2B.3 CAA – Consolidated Appropriations Act
- 2B.4 COBRA – Consolidated Omnibus Budget Reconciliation Act
- 2B.5 DCAP – Dependent Care Assistance Plan
- 2B.6 FEMA – Federal Emergency Management Agency
- 2B.7 FMLA – Family Medical Leave Act
- 2B.8 FSA – Flexible Spending Account
- 2B.9 NCQA – National Committee for Quality Assurance
- 2B.10 PEPM – Per Employee per month
- 2B.11 SPD – Summary Plan Description
- 2B.12 SSAE – Statements on Standards for Attestation Engagement
- 2B.13 URAC – Utilization Review Accreditation Commission
- 2B.14 USERRA – Uniformed Services Employment & Reemployment Rights Act

3. **GOALS AND OBJECTIVES**

The Contractor shall be responsible for the administration of the City's health care, dependent care and limited purpose flexible spending accounts. The Contractor shall act as third-party administrator and shall be responsible for the following:

- 3.1 Contractor shall set up Participants' accounts, issue FSA debit cards and provide Participants with self-service access to accounts.

- 3.2 Contractor shall maintain strict adherence to all plan and governmentally subscribed deadlines, eligibility rules and ensure that FSA Participant claims are valid in accordance with IRS regulations. This includes verifying that the expenses claimed are qualified medical expenses and requiring the Participant to provide the necessary documentation to substantiate all FSA debit card charges/ claim(s). Contractor shall maintain strict compliance and adherence with all relevant laws and guidelines.
- 3.3 Contractor shall provide notification and education to Participants of prescribed rules and laws in the event of an FSA claim denial; Contractor shall provide specifics of FSA denial reason to include, but not limited to: Documentation is incomplete, not readable, or missing.
- 3.4 Contractor shall accept claims requests by mail, secure email, secure fax or electronically through secure Participant portal.
- 3.5 Contractor shall maintain disbursement records for a minimum of six years and be subject to a future audit if deemed appropriate.
- 3.6 Contractor shall process reimbursement requests no less frequently than weekly.
- 3.7 Contractor shall offer all the following options for reimbursement: check by mail, direct deposit, and FSA debit card.
- 3.8 Contractor shall pay claims with funds in an account maintained by the City, i.e., an automatic clearing house account, over which the administrator has no control of employee/employer funds.
- 3.9 Contractor shall pay claims incurred during the benefit year for which the contract is in force and during the grace period after the end of the plan year (the run out). The City currently exercises the 2 ½ month post-Plan Year Grace Period model for claims for the Health and Dependent Care FSAs. The City reserves the right to change between Carryover or Grace Period model per plan year.
- 3.10 Contractor shall maintain up-to-date records on enrollments, terminations, and contribution amounts per an electronic file.
- 3.11 Contractor shall service FSA debit card claims to ensure minimally necessary paper substantiation in accordance with standard coding for copays from vendors who participate in the Inventory Information Approval System (IIAS).
- 3.12 Contractor shall link copay information to each participant's FSA debit card for the health care FSA.
- 3.13 Contractor shall make manual adjustments to participation information at the written direction of the City's designated Benefit Liaison(s)
- 3.14 Contractor shall provide the City with biweekly discrepancy reporting detailing differences between expected contributions and actual contribution received (deducted from pay) on a per participant basis.

- 3.15 Contractor shall provide accounting and statistical reports to the City on a quarterly cadence and upon request by the City.
- 3.16 Contractor shall perform any necessary Medical FSA and/or DCAP discrimination testing.
- 3.17 Contractor shall produce, distribute, and manage participant communications including but not limited to the following (communication material must be submitted to the City's Benefit Management liaison(s) by the Contractor in redline draft format for review and approval prior to any distribution):
 - 3.17.1 Annual statement prior to the beginning of each new plan year confirming FSA enrollment, amount of annual election, and deadlines for incurring and submitting claims in accordance with IRS guidelines and the City's Grace Period or Carryover provisions.
 - 3.17.2 Notice of account balance and the deadlines for incurring and submitting claims, to be mailed quarterly and at least 60-90 days in advance of deadlines.
 - 3.17.3 Claims that are not auto-substantiated shall automatically be entered into a progress process prior to FSA debit card being deactivated. The progress process shall be as follows:
 - 3.17.3.a At day 15 – 1st Notice following unsubstantiated claim
 - 3.17.3.b At day 30 – 2nd Notice – Claim denial and card deactivation.
 - 3.17.3.c At day 45 – 3rd Notice Final following no response; notice that FSA debit card will deactivate (with effective date; equal to sixty (60) days from 1st Notice date.
 - 3.17.3.d Plan Correction payroll withholding
 - 3.17.3.e Offset approach
 - 3.17.3.f Recovery as other business debt.
 - 3.17.4 Documentation to be included in new hire packets that describes types of FSAs.
 - 3.17.5 Communication, i.e., electronic printable brochure or flyer to be electronically posted to the City's Benefit website at phoenix.gov/benefits that includes Contractor contact information, FSA Medical and Dependent Care downloadable, fillable and printable claim forms to substantiate claims, helpful tips to prevent FSA claim denials, i.e. acceptable documentation

that describes all the details required on the documentation, list of common eligible FSA expenses for both general FSA Health and Limited Purpose FSA accounts, Eligible plan year service dates specific to the City's Grace Period or Carryover provisions.

Contractor shall update the communication brochure or flyer prior to the beginning of each plan year. Contractor shall provide the City a redline draft version no later than November 15th for review and approval prior to release.

- 3.18 Contractor shall prepare, and update as needed all necessary plan documents and government reporting and tax filing forms in accordance with all applicable laws and regulations, as well as provide status updates regarding these items to the City at the onset and completion of these items.
- 3.19 Contractor shall maintain compliance with all applicable federal and state laws.
- 3.20 Contractor shall develop and implement an employee education program and develop communication strategies and materials to include webinars, recorded programs, mailings, etc.
- 3.21 Upon request by the City, the Contractor shall conduct work-site educational meetings in advance of the annual open enrollment to explain the plan and to respond to employee concerns and questions.
- 3.22 Contractor shall provide exceptional customer service support via phone, e-mail and website.

4. SCOPE OF SERVICES / GENERAL REQUIREMENTS

- 4.1 Contractor shall provide the benefits and Services that are: (1) required under Exhibit A, Scope of Work; (2) proposed by Contractor and accepted by the City; and (3) otherwise required under the Contract between the Contractor and the City.
- 4.2 Contractor shall provide the Services as specified within this Solicitation effective January 1, 2026. The Plan Year begins annually on January 1, with the Open Enrollment period scheduled during the previous October. The City reserves the right to change these dates with a sixty (60) calendar days' notice to the Contractor.
- 4.3 Contractor shall develop an annual Summary Plan Description (SPD) and a Benefit Summary that outlines written policies and procedures, including coverage, rules, practice guidelines, that will allow for decisions, policies, and procedures to be appropriately administered for the Medical FSA and DCAP plans.
- 4.4 Contractor shall provide the City an FSA SPD in redline draft by October 1 of every Contract year. The redline draft SPD for the first year of Contract is due no later than October 1, 2025.

- 4.5 The Contractor shall disclose to the City all Subcontractors and assignees used to provide Services requested in relation to this Contract.
- 4.6 The Contractor shall allow the City to participate in any quality assurance processes for any and all Subcontractors.
- 4.7 The Contractor shall immediately, upon any oral or written notification to the Contractor, report to the City any potential litigation relating to issues involving Contractor, the City, and/or any Subcontractor as it pertains to any Services provided under this Contract.
- 4.8 Contractor shall be required to comply and file necessary reports/attestations/documents, etc., required under federal, state, and/or local laws that are applicable to the Medical FSA and DCAP plans and any future required reports/attestations/documents throughout the term of the Contract at no additional cost to the City. Contractor shall provide documentation confirming submission to the City, prior to the applicable deadline.
- 4.9 Contractor shall provide all benefits and Services stipulated in the SPD and in accordance with City policies and procedures set forth within this Contract and/or adopted during implementation. Contractor shall assist the City, as requested, in revisions to the Summary Plan Description.

4A. CUSTOMER SERVICE AND ENROLLMENT PROCESS

- 4A.1 Contractor shall provide a designated call center with knowledgeable staff available to answer inquiries from City Participants regarding: (1) eligibility status; (2) claims status and claims procedures; (3) an understanding of a limited purpose Medical FSA in regard to an employee enrolled in a HDHP/HSA plan (4) other matters pertaining to non-ERISA plans provided under the contract. The call center must record and retain all calls for a minimum of two years from the date of the call.
- 4A.2 Contractor shall have its customer call center and website fully operational and in a state of readiness by/before Open Enrollment Period for Eligible Employees by October 2025. Customer service representatives must be fully trained on the City benefits prior to the annual Open Enrollment.
- 4A.3 Contractor designated Account Manager shall be available to assist during annual Open Enrollment both in person and virtually upon request by the City.
 - 4A.3.1 Upon request by the City and at no additional costs, Contractor shall provide sufficient and properly trained staff for Open Enrollment meetings and other events.

- 4A.3.2 Contractor shall make available designated representatives to coordinate with City staff during the initial and future Open Enrollment periods and participation in multiple virtual and in-person group information and planning meetings upon request by the City's designated Benefit staff.
- 4A.3.3 Contractor shall provide training on the Participant and employer portal to all identified City personnel, including benefits liaisons, prior to Open Enrollment meetings when required by the City.
- 4A.3.4 All collateral Open Enrollment and communication materials shall be reviewed and approved by the City's designated Benefit staff prior to distribution to Participants.
- 4A.4 The annual Open Enrollment period shall be determined by the City. During Open Enrollment, eligible Participants shall be allowed to make changes to their health plan enrollment for the following Plan year including changing from one Health Plan to another, enrolling or removing Dependents from coverage, or enrolling or changing their election under the Medical FSA or Dependent Care FSAs. Open Enrollment election changes are effective on the first day of each Plan Year.

4B. PARTICIPANT SERVICES

- 4B.1 Contractor shall provide a fully operational, toll-free line that is answered by a live person Monday through Friday (7:00 am to 6:00 pm) Arizona Time (Arizona does not participate in Daylight Saving Time), excluding City observed holidays (<https://www.phoenix.gov/calendar/holidays>).

The toll-free line will include alternative language options (or access to language translation services). The toll-free line will include oral language services that include answering questions in at least the following non-English language(s): Spanish. Calls outside of these hours shall be handled by voice mailbox or equivalent system, available twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year. Responses to messages shall be returned by a knowledgeable staff member by the end of the following business day. This toll-free line shall be included as part of the base administration fees and at no additional cost to the City.

- 4B.2 Contractor shall ensure that the City and its Participants who are deaf or hearing impaired have access to communication services that enable them to use the phone lines. This shall be done as part of the base administrative fees at no additional cost to the City.

- 4B.3 Contractor shall provide an escalation process to respond to Participant service issues within one (1) business day for issues that cannot be resolved at the initial customer service level.

4C. CLAIMS ADMINISTRATION

- 4C.1 The City accordingly delegates to the Contractor the discretionary authority necessary to fulfill its fiduciary role as the claim's administrator. The Contractor has authority and discretion and obligation to determine whether submitted Services/costs are eligible for benefits and to apply the provisions of the plan (with the exception of participant eligibility provisions which are determined by the City or its delegate).
- 4C.2 Refunds of Medical FSA and/or Dependent Care FSA overpayments are not to be contingent upon recouping overpayments. The Contractor shall make the plan whole.
- 4C.3 Contractor shall adjudicate claims in compliance with all applicable federal and state laws.
- 4C.4 All Services provided under this Contract shall be quality services, meeting or exceeding the City-approved industry standards. When Services do not meet industry standards, or when standards are inappropriate, undesirable, and/or of poor quality (as identified by the City) the Contractor shall take immediate, corrective action and provide to the City a written action plan that clearly outlines the corrective steps to be taken and the time frames for their completion. The resources needed to correct Services that do not meet industry and the City quality standards shall be provided at no additional cost to the City.
- 4C.5 The Contractor shall take immediate corrective action and provide a written corrective action plan within fourteen (14) calendar days, as requested by the City, should the City identify any deficiencies in the performance of the Contract, including missed performance guarantees or audit findings. No fees shall be charged in the recovery or reimbursement of any funds identified in the audit finding. The corrective action plan shall include, at a minimum:
- 4C.5.1 Reference to the specific error or finding and a summary of the overall impact of the error, whether financial or to Participant(s)
- 4C.5.2 Causal factor(s)
- 4C.5.3 Name and title of the person accountable for implementing and overseeing the corrective action plan.

- 4C.6 The Contractor shall provide resources to respond within thirty (30) business days to all the City inquiries related to quality assurance, corrective actions, deficiencies, and/or inefficiencies in operations at no additional cost to the City.
- 4C.7 Contractor shall provide to the City annual quality management initiatives including, but not limited to, process improvements, customer service, and operational standards. Annual quality management initiatives shall be provided during implementation and each year at Contract renewal, along with the results from the prior year's initiatives.

4D. ELIGIBILITY & DATA INTEGRATION

- 4D.1 An eligible Participant may enroll in an FSA program within thirty-one (31) days of their hire date of eligibility date or during an annual open enrollment period generally held from October to November. If an employee does not enroll within thirty-one (31) days of their hire date or during the annual open enrollment period, they are not eligible to enroll until the next open enrollment period, unless they experience a qualifying life event. All qualifying life events are subject supporting documentation and must be submitted timely to the City's benefit's office for processing. The City reserves the right to determine eligibility of Participants for enrollment in and coverage by City Health Plans.
- 4D.2 The City's determination of eligibility for City Health Plans shall be guided by federal, state and local rules, regulations and laws, including, but not limited to 26 U.S. Code 125, the Internal Revenue Code of 1986, the Patient Protection and Affordable Care Act (PPACA), Public Health Service Act (PHSA); the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Family Medical Leave Act (FMLA), Medicare, Medicaid, and the Uniformed Services Employment and Reemployment Rights Act (USERRA), as well as City policies and collective bargaining agreements to the extent such policies and agreements meet or exceed other legal requirements.
- 4D.3 Contractor shall accept the City's HIPAA compliant, weekly PGP encrypted electronic data transmissions file as the official Participant eligibility/enrollment records. The City may determine that it is beneficial to change the electronic eligibility format in the future and reserves the right to do so with no additional cost to the City.
- 4D.4 Contractor shall accept the City's weekly eligibility file with future effective dates in advance of enrollment.
- 4D.5 Contractor shall ensure that quality control measures are in place to ensure the accuracy, consistency and reliability of the data being exchanged.

- 4D.6 The City shall administer initial and ongoing enrollment of Participants. After the employee's initial enrollment period, employee

benefit elections may only be changed annually during the designated Open Enrollment period or within the applicable election period associated with a Qualified Life Event (QLE).

- 4D.7 FSA program contributions are deducted evenly over the course of twenty-four (24) pay periods over the Plan Year, in accordance with the City's payroll schedule. All City employees are paid Bi-weekly.

- 4D.8 FSA Administrative expenses are paid by the City. Participants that are no longer determined eligible, are responsible and shall be charged separately for their own FSA administrative fee.

- 4D.9 The City instituted a grace period for the Health Care FSA. Any previous plan year's FSA funds for eligible expenses incurred through March 15 must be filled for reimbursement by March 30th. Any unused Health Care FSA funds that remain unused are forfeited back to the program and held in a trust by the City.

No carryover funds are permitted for the Dependent Care FSA. Any unused DCFSA funds at the close of the Plan Year are forfeited back to the program and held in a trust by the City.

4E. CLAIMS PROCESSING / CREDITS AND ALLOWANCES

- 4E.1 Contractor shall be responsible for receiving, properly authorizing, and processing reimbursement claims for valid reimbursement expenses and ensuring that all claims approved for reimbursement are in compliance with IRS Code.

- 4E.2 Contractor shall reimburse the City for overpayments resulting from incorrect calculations, eligibility errors, incorrectly paid claims, system and/or programing errors or other errors or adjustments made by the Contractor that are identified by the City through internal or contracted audit, operational review, financial analysis, or other means, (unless overpayment was caused by the City), regardless of whether or not the Contractor is able to recover the overpayment.

- 4E.3 Contractor shall provide to the City any recovery monies within thirty (30) calendar days from the date of the recovery, including any interest that has been included in the recovery.

- 4E.4 Contractor shall ensure that the participant has two options for accessing their FSA funds:

4E.4.1 Debit Card: Participants can use their FSA program debit card at point-of-purchase. The debit card shall be setup to automatically substantiate some eligible expenses, which limits the need to submit supporting documentation and/or reimbursement requests.

4E.4.2 Request a Reimbursement: Participants can submit a request for reimbursement to the Contractor by using either a mobile application, online account or by Reimbursement Request form.

4E.4.3 The Contractor shall process all claims and issue a reimbursement check, or electronic funds transfer to Participants with five (5) business days of receipt of a valid and complete reimbursement claim. Contractor shall be responsible for resolving all service issues related to the reimbursement accounts, including check issuance, direct deposits, stop payments, etc.

4E.5 Credits and Allowances Fund

4E.5.1 Contractor shall provide credits and allowances (“CA Funds”) for each Plan Year of the Contract; unused funds from the prior Plan Year shall rollover to the following Plan Year. All credits and allowances not to expire during the term of the Contract. The City retains full discretion over the use of such funds. At City’s discretion, CA Funds may be maintained as a single fund to encompass the initiatives which include but are not limited to the following:

4E.5.1.1 Initial and Ongoing Implementation Allowance.

4E.5.1.2 Implementation Audit Allowance.

4E.5.1.3 Ongoing Audit Allowance.

4E.5.1.4 Compliance Review Allowance.

4E.5.1.5 Training Allowance.

4E.5.1.6 Communication Allowance

4F. TECHNOLOGY

4F.1 Employer support

4F.1.1 Contractor shall provide authorized City staff access to the City’s data via any and all Contractor’s tools and relevant databases. Authorized staff shall be determined by the City Human Resources Director or designated Benefit Manager liaison. Contractor agrees to grant/rescind user access within one (1) day of receipt of notice.

4F.2 Participant support

4F.2.1 Secure Participant Portal - Contractor shall at no additional cost to the City enable Participants, through a reasonably thorough, functional, and secure Participant portal access to

online resources for personalized health and financial information. The secure Participant portal capability shall allow the Participant to perform standard functions such as submit a change of address, review of covered Participants and read plan provisions, and review claims information. This site shall be subject to requirements as stated in Section 10 (Data and Security) of the scope of work.

4F.2.2 Contractor agrees to support a mobile application that is secure, with two-factor authentication and provides access to relevant Participant history, allows Participant to submit claims and view claims status.

4F.2.3 Contractor shall ensure that Participant Portal is compliant with all language, formatting, accessibility standards or guidelines that provide greater accessibility to Participants with disabilities.

5. PERFORMANCE GUARANTEES

- 5.1 Contractor shall offer competitive implementation performance guarantees as well as aggregate performance guarantees consistent with Attachment 15.
- 5.2 Contractor shall place annual fees at risk for failing to maintain the performance guarantees in accordance with Attachment 15. Performance fees at risk will be calculated at the same frequency with which performance guarantees are reported. At no time will quarterly or monthly measurements be re-averaged to alter results.
- 5.3 The City reserves the right to allocate the percent of the fees at risk for each performance guarantee. Additionally, the City requires the ability to re-allocate the amount at risk for each performance standard on an annual basis.
- 5.4 The City may request the inclusion of additional performance measurements annually. Any additional performance measurements shall be mutually agreed upon through a written Contract amendment.
- 5.5 Contractor shall measure all performance standards and provide to the City any supporting reports as City-specific. Reports shall show actual results for the current period versus: (1) prior period(s); and (2) the guaranteed standard. Such reports shall be submitted on a schedule consistent with Section 9.5 or as otherwise agreed by the Parties.

6. IMPLEMENTATION

- 6.1 The Contractor shall submit an implementation plan as Attachment 6 and begin the implementation process within ten (10) business days of Contract award. Implementation process shall begin within five (5) business days of City's review and approval of implementatoin and transition plan. The City may request changes to the implementation plan at its discretion. The

Implementation Plan commencement date shall commence no later than May 2025, or date requested by the City (if different).

- 6.2 Contractor agrees to provide the City with a distinct, competitive Credits and Allowance Fund (reference 4E.5) for the City to utilize to offset expenses related to implementation, including consulting fees and IT fees, as deemed appropriate by the City, not to expire during the contract term. Eligible expenses will also include, but will not be limited to those for, pre-/post-implementation audits and reviews, communications, and education (including fulfillment), and programming and systems updates.
- 6.3 Contractor agrees the City may conduct a pre- or post- implementation audit to verify readiness to administer the City's program. The pre-implementation audit must be completed before the program effective date and the post-implementation audit will be conducted at a mutually agreed upon timeframe post effective date. Contractor shall provide the City a written post-implementation assessment that confirms all objectives of the implementation project are satisfactorily met.
- 6.4 Contractor agrees to provide a designated implementation manager and support team (not part of the regular account management team) that will be assigned to lead and coordinate the implementation activities with the City of Phoenix. Contractor agrees the implementation manager shall not be managing more than three (3) implementations in total while leading the implementation project for the City.
- 6.5 Contractor shall provide an administrative manual for the program that provides the information necessary for the City team members to operate the program. The manual shall be provided at the time of implementation and shall be updated on an ongoing basis by the account management team and/or by the City. This manual shall be provided as part of the base administrative fees and with no additional cost to the City.
- 6.6 The manual shall be in a mutually agreed upon format and include, but not be limited to, the following information:
 - 6.6.1 Account management structure and contact information
 - 6.6.2 A process for handling questions and the escalation process
 - 6.6.3 Eligibility file layout and exchanges
 - 6.6.4 System testing and documentation
 - 6.6.5 A catalog for all Participant communication
 - 6.6.6 Eligibility processes and time frames
 - 6.6.7 Claims payment process including, but not limited to, auto adjudicated and manually processed claims.
- 6.7 The designated implementation manager shall continue to support the City through completion of the implementation process and for a minimum of

forty-five (45) calendar days after the implementation effective date of January 1, 2026. Such support includes but is not limited to: weekly calls with the City and the designated account management team, maintenance of issue tracking logs, and issue resolution. This support must be provided as part of the base administrative fees with no additional cost to the City.

- 6.8 Contractor shall be required to begin Services prior to the plan year effective date to prepare for the program (e.g., implementation, open enrollment).

7. PLAN PARTICIPANT COMMUNICATION MATERIALS, ADVERTISEMENTS, AND MARKETING MATERIALS

7.1 All communication materials to Participants shall be sent using First Class mail at no additional cost to the City unless another class is required or authorized by the City.

7.2 Contractor shall co-brand any communication material with the City logo or other logo determined by the City as part of the base administrative fees and at no additional cost to the City.

7.3 Contractor shall include a toll-free telephone number on the website and on all communication material.

7.4 Contractor shall provide a web portal for Participants that provides the information necessary to comport with federal and state law and meets the confidentiality and data security specifications required by this Contract, City policy and HIPPA privacy regulations.

7.5 Contractor shall prepare, design, produce, and mail all announcements, letters, notices, brochures, FSA Medical and Dependent Care downloadable, fillable and printable claim forms, and other supplies and Services at no additional cost to the City.

7.6 Contractor shall develop a welcome packet which will be mailed to each new participant that includes clear and easy to read information about account set-up, ordering and using an FSA debit card, what is considered an unsubstantiated claim and what will need to substantiate the claim, eligible and ineligible expenses, and claims submission. The packet shall be mailed to new participants within five (5) business days of the FSA Contractor receiving the City's enrollment file.

7.7 Contractor shall submit copies of all Plan Participant communication materials and promotional materials to the City. The City reserves the right to review the content of any communication and to make revisions prior to any distribution. All such materials shall be approved in writing by the City prior to use in promoting the applicable program to Participants. Materials include, but are not limited to: customized Participant communication materials during the transition and implementation activities, notification letters, error/correction letters, appeal letters, newsletters, and/or any material distributed to the City FSA plan participants, as well as:

- 7.7.1 Summary Plan Description.
- 7.7.2 All communications materials, advertisements, and marketing materials
- 7.7.3 Instructions for claims processing that are clear and complete.
- 7.8 Contractor shall facilitate links between the City websites and Contractor's website as part of the base administrative fees and at no additional cost to the City.
- 7.9 Contractor shall have available the following online tools and Services, at no additional cost to the City. These tools and Services shall be updated at least quarterly, to ensure the accuracy of the information for Participants and providers as applicable:
 - 7.9.1 Benefit information including, but not limited to: Summary Plan Descriptions.
 - 7.9.2 Access to FSA claim history.
 - 7.9.3 Fillable, Downloadable, and printable claim forms.

8. ACCOUNT MANAGEMENT TEAM

- 8.1 Contractor shall provide a team of designated professionals who are responsible for ensuring that all Contract requirements and service deliverables are met by the Contractor. The City reserves the right to approve the staffing of the City service team. The Designated Teams may also serve other clients if such assignment does hinder timely performance of Services for the City.
- 8.2 Contractor shall provide an account management team that is experienced in providing Services for similar entities, trained on the applicable City plans, accessible to the City geographically, and with sufficient capacity and authority to respond to the City issues in a timely manner. The account management team shall include:
 - 8.2.1 Account Manager – shall be the single, day-to-day contact for the City with the primary responsibilities of responding to all issues, coordinating the efforts of the Contractor's staff to resolve issues, and overseeing all aspects of project management including, but not limited to the initial implementation and ongoing new program facilitation. The Account Manager shall have a minimum of two (2) years of experience with the Contractor's organization or a similar industry. If possible, Account Manager shall also be a local resident of Arizona and be onsite at the City's request.
 - 8.2.2 Implementation Manager – Responsible for development and execution of implementation plan. Coordinates with the City, internal and other external resources. The Implementation Manager shall

- represent the sole, consistent point of contact to the City during the implementation process. Three (3) years of experience as an Implementation Manager and experience with groups of 2,000 Participants and larger are also required.
- 8.2.3 Executive Sponsor – shall be responsible for collaborating with the City’s designated Benefit liaisons on issues related to legislation, policy and high-level operational issues and shall provide timely, without unreasonable delay recommendations to the City.
- 8.2.4 IT System Manager – shall be a day-to-day contact who will have the primary responsibility of responding to and resolving all IT-related issues that arise for the duration of the Contract.
- 8.2.5 Enrollment/Eligibility Lead – shall be a day-to-day contact with the primary responsibility of responding to all issues related to billing, enrollment, termination, and eligibility. The Enrollment/Eligibility Lead will be responsible for resolving all such issues that surface during implementation, open enrollment, and all ongoing service.
- 8.2.6 Member Services Manager –The Contractor shall provide a minimum of one Member Services Manager who is responsible for all customer service functions and reporting. The Member Services Manager shall be intimately familiar with the City’s plans to serve the Participants. Three (3) years of experience as a successful Member Services Manager and experience with groups of 20,000 members and larger are also required.
- 8.2.7 Data Analytics Manager – shall be responsible for providing analysis, assessment, and recommendations to the City based on the City’s utilization to improve the FSA Plan performance. The Data Analytics Manager shall participate, upon request by the City during any standing or adhoc Contractor/City meetings and shall provide recommendations to support quality improvement programs, and plan design changes.
- 8.3 Contractor shall provide to the City’s administration at least thirty (30) calendar days advanced notice of any planned change to the primary account manager.
- 8.4 Contractor shall provide to the City an escalation process to assist in matters which are unable to be resolved at the account team level.
- 8.5 Contractor shall provide the City with access to an electronic tracking and resolution log of all open and closed the City issues in the required format.
- 8.6 Contractor shall provide to the City documentation of a process for prompt issue resolution in the event of a failure to perform a required service.
- 8.7 Contractor shall attend standing weekly account management calls with appropriate personnel to address potential questions, provide relevant

- updates regarding member issues, communication strategies, compliance, staffing, etc.
- 8.8 The core members of the account management team: account manager, member services manager, data analytics manager, IT system manager, and executive sponsor shall meet with the City representatives quarterly within fifty-five (55) calendar days after the close of each quarter. Meetings shall be held virtually. The City reserves the right to request in person meeting(s), at no additional costs to the City.
- 8.9 The Contractor shall conduct a Participant satisfaction survey as it relates to FSA services under this Contract. The survey shall be conducted annually during the plan year. The Contractor shall provide the City with a copy of the survey instrument for its review. Such surveys shall be for the purpose of assessing Participant and provider satisfaction with Services performed by Contractor.
- 8.10 Contractor shall conduct an annual account management satisfaction survey/score card. The survey and scoring methodology shall be mutually agreed upon by the City and the Contractor during implementation.
- 8.11 The City may make public the results of such surveys for distribution among Health Plan Participants, the legislature, and/or the media if requested.
- 8.12 The Contractor shall ensure that staff is appropriately trained on the City Plans and that quality assurance and financial accuracy procedures are in place so that procedures are applied consistently, fairly, and accurately.
- 8.13 Upon request by the City, the Contractor shall participate in vendor summit discussions to identify opportunities to enhance the Participant experience.
- 8.14 Contractor agrees that the City of Phoenix has the right to review, meet with and approve changes to the account team assigned to service City of Phoenix, and agrees not to voluntarily change the assigned account team without prior consent from the City.
- 8.15 Contractor shall participate in regular Account Team meetings with City Benefit Management as frequently as on a weekly basis immediately following implementation and on a bi-weekly basis after implementation is fully achieved.
- 8.16 Contractor agrees that designated account representatives shall be available to answer questions from the City's Benefits liaison, Consultant(s), or by or on behalf of the HealthCare Benefits Trust Board. Contractor shall provide the City with open enrollment readiness support each contract year. Such support shall include training customer service staff on changes, implementing plan design changes, accurate set up of open enrollment website, and providing accurate Participant communications. Review and testing for accuracy will occur and results will be reviewed with the City.

8.17 Contractor agrees City may assess a penalty if the account team performance (as rated by the City's Benefits Management), does not meet City expectations. All members of the Contractor's account management team shall be reviewed as part of this guaranteed measurement. Account management team performance measures shall include but not limited to timely and complete communication with Benefits Management, Participant satisfaction, and serving as the primary liaison to the City.

9. REPORTING

9.1 Contractor shall collect and report statistics and/or summaries on a monthly, quarterly, and annual basis as specified by the City. If the reports do not adequately meet the City requirements, Contractor shall customize the reports to the City's specifications as part of the base administrative fees and at no additional cost to the City. The City's requirements may change from time to time during the term of the Contract.

9.2 Contractor shall provide comprehensive and meaningful reporting across the Plan, including summary analysis and consultative proposed action items to address any identified concerns.

9.3 Contractor shall provide real-time access to claims reports and utilization data.

9.4 Contractor shall agree to all required electronic file feed(s) in the designated format at the designated cadence as required by the City. The City may determine that it is beneficial to change a file format in the future and reserves the right to change the format at no additional cost to the City.

9.5 Contractor shall submit required, City-specific reports to the City within thirty (30) calendar days of the end of the month for monthly reports, within forty-five (45) calendar days of the end of the quarter for quarterly reports, and within ninety (90) calendar days of the end of the Plan year for annual reports.

9.6 The City will specify the reporting formats, file specifications, and frequency of written or electronic reports required from the Contractor to the City or from the City to the Contractor during implementation. Additional fees shall not be charged to the City related to the Contractor's standard reports or the designing and developing of required regular or ad-hoc reporting.

9.7 Contractor shall provide ten (10) user IDs to access the web-enabled online reporting tools as part of the base administrative fees with no additional charge to the City (including designees).

9.8 Contractor shall offer comprehensive on-site or web-based training for the online reporting tool as part of the base administrative fees and with no additional cost to the City (including designees).

10. ADDITIONAL DATA AND SECURITY

- 10.1 Contractor agrees to accept weekly eligibility files from the City at no cost to the City in adherence to the City's Security and EDI Protocols. The City uses Oracle's PeopleSoft for payroll processing. The City requires receipt of a weekly discrepancy report from the selected Contractor. Contractor shall:
 - 10.1.1 Integrate using the City's EDI file layout.
 - 10.1.2 Complete successful EDI transaction testing prior to production.
 - 10.1.2 Post the electronic eligibility file feed within one (1) business day of receipt.
 - 10.1.3 Encrypt all data storage and back up media.
 - 10.1.4 Use secure and encrypted FTP, SFTP, HTTPS, and VPN methods of data transmission as a means of sending and receiving files between City approved parties.
 - 10.1.5 Use secure site to send and receive emails from administrative staff.
 - 10.1.6 Own a debit card adjudication system rather than through or by a third-party system.
- 10.2 Contractor shall provide technical assistance to the City as it relates to organizing, supplying, processing, or reporting applicable data.
- 10.3 Contractor shall provide all necessary codes, definitions, and data sets or subsets, or other information the City requires within sixty (60) calendar days of the City's request. Contractor shall provide data dictionaries in industry standard format, including crosswalks. This data shall be maintained for no less than seven (7) years from termination of the Contract and shall be provided to the City at the termination of the Contract.
- 10.4 The Contractor shall maintain the data and shall make it readily available to the City for no less than seven (7) years from termination of the Contract, and access by the City shall be allowed indefinitely or until such time as the City approves otherwise.
- 10.5 Contractor shall conduct reconciliation on each data feed and work with the appropriate vendors to keep the data accurate and consistent among all parties as part of the base administrative fees and at no additional cost to the City.
- 10.6 Contractor shall provide the City or its designee all required electronic file feeds as requested by the City. Contractor shall not charge programming fees associated with data file transfers in current data file compliant formats. This data shall be made available through the City's File Transfer Protocol (FTP).
- 10.7 Contractor shall establish PGP Encryption connections with the City as part of the base administrative fees and at no additional cost to the City.

- 10.8 Contractor shall revise any data feeds according to any new file specifications requested and at no additional charge to the City.
- 10.9 Contractor shall work with any of its internal systems, subcontractors' systems, or with the City's contracted vendors to identify opportunities to improve operational efficiencies and program efficacies.
- 10.10 Contractor shall provide information related to the processing of all claims in the claim electronic data file layout format specified by the City. Contractor shall agree that any and all data will be available to the City or its designee, and Contractor shall provide such data and regular reporting intervals in a pre-approved format, as well as Ad-Hoc basis as requested at no additional cost to the City.
- 10.11 Upon identification and determination of system problems, programming problems, or transfer problems, the Contractor shall notify the City of the issue immediately, without unreasonable delay. The Contractor shall make every effort necessary to correct such problem as soon as possible including, but not limited to, working nights, weekends, and holidays, to minimize any negative impact to Participants and to maintain continual operations of the FSA Plan at no additional cost to the City.
- 10.13 The City shall develop, and the Contractor shall use the City's six-digit Employee Identification Numbers (EINs) in a format and style developed by the City to enroll and identify all City of Phoenix Participants. Alternative identification numbers will not be accepted. This service shall be included as part of the base administration fees and at no additional cost to the City. Please note that the City's six-digit EIN starts with a zero.
- 10.14 Contractor shall provide and be able to receive eligibility files from any vendor contracted with the City who requires such files. These files shall be in a standard 834 format (or modified format) as agreed upon between the City and the Contractor to meet specific file layout requirements of the City at no additional cost to the City.
- 10.15 Contractor shall notify the City via e-mail within one (1) business day, should they uncover any eligibility discrepancies within the file transfer (i.e., errors, duplicates, etc.)
- 10.16 Contractor shall agree to communicate through HIPAA-compliant electronic sites to exchange data between itself and any other required vendor as requested by the City and at no additional cost.
- 10.17 Contractor shall load and reconcile daily and monthly eligibility files or other files within one (1) business day of receipt.
- 10.18 Contractor shall make all data available to the City via the SFTP site established during implementation. In addition, all schemata and file definitions shall be made available to the City upon request.

11. APPENDICES WHICH APPLY TO THE SOLICITATION/SCOPE OF WORK

These Appendix / Appendices are provided by the City for informational purposes and as part of the Solicitation only. These Appendix / Appendices will not be part of the final scope of work.

APPENDIX 1 - City of Phoenix FSA Metrics

EXHIBIT B – FEE SCHEDULE

Most Favored Nations: If the Contractor enters (or has previously entered) any written agreement that has the effect of establishing Fee Schedule benefitting another Client with a similarly sized and risked employee pool in a manner more favorable in any material respect to Fee Schedule set forth herein, the Contractor shall furnish to the City as soon as reasonably practicable, a compendium containing the more favorable Fee Schedule (an “Election Notice”). The City may elect to receive the more favorable Fee Schedule set forth in such Election Notice that are reasonably applicable to the City upon written notice to the Contractor within thirty (30) days of receipt of a copy of such Election Notice.

The initial rates shall be guaranteed for five years, from January 1, 2026 through December 31, 2030.

The City shall have the right to terminate without penalty if the pricing terms are not industry competitive. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term. The City will be the sole judge in determining the allowable increase amount.

Contractor’s Fee Schedule will be inserted upon award.

Refer to Attachment 15 - Financial Workbook (Fee Schedule) for completion of the pricing.

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (“BAA” or “Agreement” is entered into on this **1ST day of JANUARY, 2026** (“Effective Date”) between **City of Phoenix** and _____ (hereinafter referred to as “Business Associate”). (Covered Entity and Business Associate may each be referred to as a “Party,” and collectively, as the “Parties.”) Covered Entity and Business Associate are Parties to the underlying **Flexible Spending Account (FSA) Administration Services** (“Underlying Agreement”) into which this BAA is incorporated as Exhibit C, that contains express and implied mutual promises and covenants that in some instances will require the use or disclosure of Protected Health Information (“PHI”) (defined below) pursuant to the terms of this Agreement.

In consideration of the Parties’ continuing obligations as set forth in the Underlying Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

I. Background and Purpose

- (a) Covered Entity and Business Associate have entered into the Underlying Agreement, pursuant to which Business Associate will be providing Flexible Spending Account (FSA) administration services on behalf of Covered Entity.
- (b) Business Associate, in the course of its work for Covered Entity, will frequently perform duties on behalf of Covered Entity that may require the use or disclosure of PHI.
- (c) Covered Entity has obligations to protect the privacy and security of PHI received its employees. Covered Entity is thus subject to and must comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (Division A, Title XIII, and Division B, Title IV, of Pub. L. No. 111-5) (which was part of the American Recovery and Reinvestment Act of 2009 (“ARRA”) and relevant implementing regulations, including the Privacy Rule (defined below), the Security Rule (defined below), and the Breach Notification Rule (defined below). Covered Entity is further contractually required to pass such statutory and regulatory obligations on to its subcontractors, agents, and vendors, including entities such as Business Associate.
- (d) _____ constitutes a Business Associate of Covered Entity (as such term is defined in the Code of Federal Regulations (“Regulations” or “C.F.R.”), *see* 45 C.F.R § 160.103) and wishes to commence and/or continue its business relationship with Covered Entity.

- (e) The Parties mutually intend that this Agreement between them will assure compliance with applicable provisions of law and regulation pertaining to the responsibilities of Business Associates of Covered Entities and the obligations that are properly imposed upon and undertaken by “downstream” subcontractors, vendors, or agents of such Business Associates.
- (f) This Agreement replaces any existing Agreement or other terms and conditions entered into or agreed upon by the parties governing their respective rights and obligations under HIPAA, as amended, and/or its implementing rules and regulations.

II. Definitions

Terms used, but not otherwise defined, in this Agreement shall, as applicable, have the same meaning as the definitions for such terms in the federal regulations implementing HIPAA, as amended by HITECH provisions of ARRA, which is published in the C.F.R. at Title 45, Parts 160 and 164, as amended from time to time.

- (a) “Breach” shall have the meaning given to such term in 45 C.F.R. § 164.402.
- (b) “Breach Notification Rule” shall mean the final omnibus rule related to breach notification for unsecured protected health information at 45 C.F.R. Parts 160 and 164.
- (c) “Business Associate” shall have the meaning given to such term in 45 C.F.R. § 160.103.
- (d) “Covered Entity” shall have the meaning given to such term in 45 C.F.R. § 160.103.
- (e) “Designated Record Set” shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.501.
- (f) “Discovery” shall mean the first day on which an event is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate), or should reasonably have been known to Business Associate, to have occurred.
- (g) "Electronic Health Record" shall have the meaning given to such term in Section 13400 of the HITECH Act (42 U.S.C. § 17921).
- (h) "Electronic Protected Health Information" or "EPHI" shall have the same meaning given to such term under the Security Rule at 45 C.F.R. § 160.103, including, but not limited to protected health information in electronic form that is created, received, maintained, or transmitted by the health care component of a Covered Entity.
- (i) “HIPAA” or “Health Insurance Portability and Accountability Act of 1996” are those provisions set forth in Public Law 104-191 and its implementing rules and regulations.
- (j) “HITECH Act” or “HITECH” or “Health Information Technology for Economic and Clinical Health Act” are those provisions set forth in Title XIII of the ARRA of 2009, Public Law 111-5 as enacted on February 17, 2009 and its implementing regulations.

- (k) “Individual” shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (l) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- (m) “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy and Security Rules at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (n) “Required by Law” shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.103.
- (o) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (p) “Security Breach” shall have the same meaning given to the term “breach of security” in Section 13407 of HITECH provisions of ARRA (42 U.S.C. § 17937).
- (q) “Security Breach Compliance Date” means the date that is thirty (30) days after the Secretary published interim final regulations to carry out the provisions of Section 13402 of Subtitle D (Privacy) of ARRA, which date is September 24, 2009.
- (r) “Security Incident” shall have the meaning given to such phrase under the Security Rule at 45 C.F.R. § 164.304.
- (s) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- (t) “Subcontractor” shall have the meaning given to such term under in 45 C.F.R. § 160.103.
- (u) “Unsecured Protected Health Information” shall have the meaning given to such phrase under the Breach Notification Rule at 45 C.F.R. § 164.402.
- (v) Other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in have the same meaning as the definitions for such terms in the federal regulations implementing HIPAA, as amended by HITECH provisions of ARRA (which is published in the C.F.R. at Title 45, Parts 160 and 164), and/or the Privacy, Security, Enforcement & Breach Notification Final Omnibus Rule, as such rules and provisions are amended from time to time (collectively, the “HIPAA Rules”).

III. Obligations and Activities of Business Associate

- (a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted by this BAA or as required by law. Business Associate acknowledges that, as of the Effective Date of this Agreement, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and § 1320d-6 (as amended from time to time), for failure to comply with any of the use and disclosure requirements of this Agreement and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.
- (b) Business Associate agrees that beginning on the Effective Date of this Agreement or the Security Breach Compliance Date, it will report to Covered Entity any Security Incidents required by HIPAA or HITECH, Security Breach of Unsecured PHI, or any use or disclosure of PHI not provided for by this Agreement without unreasonable delay, and in no case later than (1) the time period required by HIPAA or HITECH, (2) allowed in any applicable underlying contract, or (3) sixty (60) calendar days after Discovery of a Breach, whichever is earliest. Such notice shall include the identification of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed during such Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach. Business Associate's notification of a Breach under this Section III(b) shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA, 45 C.F.R. § 164.410, and any related guidance issued by the Secretary from time to time.
- (c) Business Associate agrees that in accordance with 45 C.F.R. § 164.314(a)(2), it will comply with the applicable requirements of Part 164, Subpart C, including but not limited to (1) ensuring that any Subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of Business Associate agree to comply with the applicable requirements of Part 164, Subpart C by entering into a contract or other arrangement that complies with the HIPAA Rules, and (2) reporting to Covered Entity any Security Incident of which it becomes aware, including breaches of unsecured protected health information as required by 45 C.F.R. § 164.410.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect of any use or disclosure that is known to Business Associate to have occurred in violation of the terms of this BAA, including but not limited to compliance with all mitigation factors and other provisions listed at 45 C.F.R. § 160.408.

- (e) Business Associate agrees to ensure that any of its agents or subcontractors to whom Business Associate provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI, and agree to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits. With respect to Electronic Protected Health Information, Business Associate shall implement and comply with (and ensure that its subcontractors and agents implement and comply with) the security standards set forth at 45 C.F.R. § 164.306, administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that, as of the Effective Date of this Agreement, (i) the foregoing safeguard, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate may be liable under the civil and criminal enforcement provisions set forth in 42 U.S.C. § 1320d-5 and § 1320d-6, as amended from time to time, for failure to comply with the safeguard, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.
- (f) Business Associate agrees that it shall keep such records and submit such compliance reports, in such manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether Covered Entity or Business Associate has complied or is complying with the applicable administrative simplification provisions, in accordance with 45 C.F.R. § 160.310(a).
- (g) Business associate agrees that it shall cooperate with Covered Entity and the Secretary in the event that the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of Covered Entity or Business Associate to determine whether Covered Entity or Business Associate is complying with the applicable administrative simplification provisions, in accordance with 45 C.F.R. § 160.310(b).
- (h) Business Associate agrees that it shall:
 - (1) In accordance with 45 C.F.R. § 160.310(c)(1), permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining compliance with the applicable administrative simplification provisions. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, Business Associate must permit access by the Secretary at any time and without notice.
 - (2) In accordance with 45 C.F.R. § 160.310(c)(2), if any information required of Business Associate under 45 C.F.R. § 160.310(c) is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, Business Associate must so certify and set forth all efforts it has made to obtain the information.

- (i) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity and/or to the Secretary of the United States Department of Health and Human Services, within ten (10) business days of receiving such request, or at such other time as may be designated by the Secretary, for purposes of the Secretary determining Covered Entity's and/or Business Associate's compliance with the Rule and the HITECH provisions of ARRA and related guidance as issued by the Secretary from time to time.
- (j) Business Associate agrees that in accordance with 45 C.F.R. § 164.502(a)(4), it shall disclose protected health information (1) when required by the Secretary under Part 160, Subpart C to investigate or determine the Business Associate's compliance with the HIPAA Rules, or (2) to Covered Entity, an Individual (or Individual's designee), as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.
- (k) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual or an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH provisions of ARRA and related guidance as issued by the Secretary from time to time.
- (l) Business Associate agrees to provide to Covered Entity or the Individual to whom PHI relates, upon request and within ten (10) business days of receiving such request, information collected in accordance with Section III(k) of this BAA and sufficient to constitute or permit Covered Entity to provide, a response to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. In addition, with respect to information contained in an Electronic Health Record, Business Associate shall document, and maintain such documentation for three (3) years from date of disclosure, such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of information contained in an Electronic Health Record, as required by Section 13405(c) of Subtitle D (Privacy) of ARRA (42 U.S.C. § 17935), and related regulations issued by the Secretary from time to time.
- (m) Business Associate agrees to provide access to Covered Entity or an Individual, as requested by or directed by Covered Entity, respectively, to Health Information in a Designated Record Set within ten (10) business days of such request, to meet the requirements under 45 C.F.R. § 164.524 and Section 13405(e) of Subtitle D (Privacy) of ARRA (42 U.S.C. § 17935(e)), and related guidance issued by the Secretary from time to time.
- (n) Business Associate agrees to promptly make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual to whom the PHI pertains.
- (o) Business Associate agrees, in accordance with 45 C.F.R. § 164.502(a)(5)(ii), that it shall not sell any PHI received from Covered Entity, except pursuant to written authorization

and consent provided by Covered Entity to Business Associate that complies with the requirements of 45 C.F.R. § 164.508(a)(4).

- (p) Business Associate agrees, in accordance with 45 C.F.R. § 160.316, that it shall not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual or other person for (1) filing a complaint under 45 C.F.R. § 160.306, (2) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under this part, or (3) opposing any act or practice made unlawful by the HIPAA Rules, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of Part 164, Subpart E.

IV. Permitted Uses and Disclosures by Business Associate

- (1) Business Associate may use and/or disclose Protected Health Information provided or made available from Covered Entity only (1) to complete any and all services agreed to pursuant to the Underlying Agreement between the parties (and any corresponding Statement(s) of Work, as applicable), or (2) to perform functions, activities, or services for, or on behalf of Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, violate the terms of this Agreement, or violate the policies or procedures of Covered Entity.
- (b) Except as otherwise limited in this BAA, Business Associate acknowledges that it shall request from Covered Entity and disclose to its affiliates, agents and subcontractors or other third parties, only (i) the information contained in a “Limited Data Set,” as such term is defined at 45 C.F.R. § 164.514(e)(2), or, (ii) if needed by Business Associate, the minimum necessary PHI to accomplish the intended purpose of such requests or disclosures. In all cases, Business Associate shall request and disclose Protected Health Information only in a manner that is consistent with this Agreement, all relevant HIPAA Rules, and guidance issued by the Secretary from time to time.
- (c) Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, or for the management, prosecution, or defense of any legal proceeding which involves Business Associate (including but not limited to the disclosure of such PHI and/or ePHI to any law firm or expert that may be retained by or otherwise represent or assist Business Associate in any such lawsuit). Business Associate shall obtain reasonable assurances from the person or entity to whom the information is disclosed that (i) it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (ii) the person or entity shall notify the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

- (d) Except as otherwise limited in this BAA, Business Associate may, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), disclose Protected Health Information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Health Information on its behalf, only if Business Associate obtains satisfactory assurances, through a business associate agreement that satisfies 45 C.F.R. § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information.
 - (1) In accordance with 45 C.F.R. § 164.504(e)(1)(iii), in the event that Business Associate learns or knows of a pattern of activity or practice of a subcontractor that presently constitutes or previously constituted a material breach of the subcontractor's obligation under the business associate agreement providing for the disclosure of PHI, Business Associate shall (A) promptly notify Covered Entity of such activity or practice, and (B) take prompt, reasonable steps to cure the breach or end the violation, as follows:
 - A. Provide an opportunity for subcontractor to cure the breach or end the violation within ten (10) days of receiving notice of the breach and/or violation. If such action does not successfully bring about cure of the breach or an end to the violation within the time specified by the Parties, Business Associate may terminate the BAA and the Underlying Agreement under which the subcontractor has access to, uses or discloses PHI on behalf of Business Associate and/or Covered Entity; or
 - B. Immediately terminate the BAA and the Underlying Agreement under which the subcontractor has access to, uses or discloses PHI on behalf of Business Associate and/or Covered Entity, if cure of the breach or causing the violation to end is not possible; or
 - C. If neither termination nor cure is feasible, Business Associate, under direction from Covered Entity, shall report the violation to the Secretary, as required by the HIPAA Rules, or other applicable laws, rules, or regulations.
- (e) Except as otherwise limited in this BAA or the Underlying Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (f) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

V. Obligations of Covered Entity

- (a) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (c) **Permissible Requests by Covered Entity**. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended, and shall not be construed, to limit Business Associate's capacity to use or disclose Protected Health Information for the proper management and administration of the Business Associate or to provide Data Aggregation services to Client, as provided for and expressly permitted under Section IV.(b), (d), and (e) of this BAA.

VI. Term and Termination

- (a) **Term.** The Term of this BAA shall be effective on the Effective Date provided herein, and shall terminate when the contractual or other relationship between Covered Entity and Business Associate that involves or requires the receipt, creation, use, and/or disclosure of PHI by or to the Business Associate is terminated or ceases to exist, whichever is earlier.
- (b) **Termination for Cause.** Upon Covered Entity obtaining knowledge of or reason to believe that a pattern of activity or practice by Business Associate that constitutes a material breach or violation of Business Associate's obligations under this BAA, Covered Entity shall:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) days of receiving notice of the breach and/or violation. If such action does not successfully bring about cure of the breach or an end to the violation within the time specified by the Parties, Covered Entity may terminate this BAA and the Underlying Agreement under which the Business Associate has access to, uses or discloses PHI on behalf of Covered Entity; or
 - (2) Immediately terminate this BAA and the Underlying Agreement under which the Business Associate has access to, uses or discloses PHI on behalf of Covered Entity, if cure of the breach or causing the violation to end is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary, as required by the HIPAA Rules, or other applicable laws, rules, or regulations.

(c) **Obligations of Business Associate Upon Termination**

- (1) Except as provided in paragraph (2) of this subsection, upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that return or destruction of any Protected Health Information is not feasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

VII. State Law

If state law applicable to the relationship between Business Associate and Covered Entity contains additional or more stringent requirements than federal law for Business Associates regarding any aspect of privacy or security, then Business Associate agrees to comply with the additional or more stringent standard contained in applicable state law.

VIII. Miscellaneous

- (a) **Regulatory References.** A reference in this BAA to a section in the HIPAA Rules means the section as is presently in effect or amended.
- (b) **Amendment.** This BAA may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. Covered Entity and Business Associate agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA or the Privacy, Security or Breach Notification Rules.
- (c) **Indemnification.** Business Associate agrees to defend, indemnify and hold Covered Entity harmless from and against any and all penalties, claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of a breach or violation by the Business Associate of its obligations under this BAA, the HIPAA Rules, or applicable law, rules, or regulations.
- (d) **Survival.** The respective rights and obligations of Business Associate pursuant to this Agreement shall survive the termination of this Agreement.
- (e) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity comply with the HIPAA Rules.

(f) **Notice.**

1. **To COVERED ENTITY.** Any notice or reporting required under this BAA to be given to Covered Entity shall be made in writing to:

NAME: _____

TITLE: _____

ADDRESS1: _____

ADDRESS2: _____

PHONE: _____

EMAIL: _____

FAX: _____

2. **To BUSINESS ASSOCIATE.** Any notice or reporting required under this BAA to be given to Business Associate shall be made in writing to:

Contact Name

Title

Mailing Address

City, State, Zip Code

Phone Number

Email Address

* * * * *

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

City of Phoenix

Consultant

By _____

By _____

Adriana Phillips
Assistant Finance Director

Name _____
Title _____

APPENDIX 1 – City of Phoenix FSA Metrics

1. What is the average Health Care FSA, Limited Purpose FSA, and Dependent Care contribution amounts for employees?
 - FSA - \$1,337,019.43
 - FSA LP - \$139,233.93
 - DCAP - \$466,664.80
2. Average annual spend for the FSA: \$1,247,601.18
3. The total number of participants who forfeited money in the last plan year for Health Care FSAs: 895
4. The total amount of forfeited money for the last plan year for Health Care FSAs: \$68,884.79
5. The total number of participants who forfeited money in the last plan year for Limited Purpose FSAs: 52
6. The total amount of forfeited money in the last plan year for Limited Purpose FSAs: \$21,140.49
7. The total number of participants who forfeited money in the last plan year for Dependent Care FSAs: 31
8. The total amount of forfeited money in the last plan year for Dependent Care FSAs: \$20,107.19