



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

**AVIATION DEPARTMENT  
AIRPORT PLANNING CONSULTING ON-CALL SERVICES  
FISCAL YEARS 2025/26 TO 2029/30**

**PROCUREPHX PRODUCT CATEGORY CODE: 925000000  
RFX 6000001696**

**NOTIFICATION NO. 1**

**January 21, 2025**

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

**Response to Questions:**

1. **QUESTION:** Can you clarify if the EMR rating is still needed as listed in the RFQ?  
**ANSWER:** No, the EMR rating is not needed or required.
2. **QUESTION:** Can the City confirm that subconsultants are not required?  
**ANSWER:** Subconsultants are not required.
3. **QUESTION:** What constitutes a large aviation firm and if you could explain the difference?  
**ANSWER:** The ability to do majority of the items listed and defined in the Scope of Work in the RFQ, (public outreach, airfield design, airspace and terminal design, etc.) with the staff that you have in your firm.
4. **QUESTION:** Can the City clarify if the cover page is equivalent to a cover letter?  
**ANSWER:** The cover page is a sheet with the project title, project number, and firm name. The next page is the Information Sheet with more information. It is at the discretion of the firm if a cover letter will be included and will count towards the total page count if ratable information is included.
5. **QUESTION:** When and where will questions to the solicitation be posted?  
**ANSWER:** The last day for questions is Friday, January 17<sup>th</sup> and the Notification will be posted on the website under the RFX number 6000001696.
6. **QUESTION:** Could the City clarify if there is a specific file naming structure when submitting the RFQ?  
**ANSWER:** Since we do not accept the SOQs via ProcurePHX, there is no naming structure limitations as long as the SOQ is titled for the specific project and solicitation you are submitting for and firm name.

7. **QUESTION:** Is the cover letter included in the total page count?  
**ANSWER:** Yes. If there is ratable information inclusive in the cover letter that may apply to the evaluation criteria, that page will be counted in the total page count.
8. **QUESTION:** 2 of the 3 airports are general Aviation airports, can a firm without extensive large hub experience propose on airport planning work for just the general Aviation airports?  
**ANSWER:** Majority of the projects we anticipate are related to the Phoenix Sky Harbor International Airport so the RFQ was written emphasizing a need for a large firm with extensive experience for a large hub. It is up to the firm to decide to submit a proposal or not.
9. **QUESTION:** What is the project number for this project?  
**ANSWER:** There is no specific project number for this solicitation so you can list None.
10. **QUESTION:** Are you able to provide a sample contract like a draft?  
**ANSWER:** Yes, we can provide a draft sample contract, see Attachment.
11. **QUESTION:** Can you explain the difference between how project examples in the RFQ should be presented in Section A criteria versus in Section C criteria? Is Section A just a short one to two sentences and Section C a more detailed case study?  
**ANSWER:** In Section A, smaller details like a list or more like a resume of the projects and in Section C more of a case study describing more in details and how your firm would like to apply your experience across the application criteria.
12. **QUESTION:** Can the font size be less than 10 pt for the description or information listed below the pictures or graphics in the RFQ?  
**ANSWER:** The RFQ states that the font size is no less than 10 pt.
13. **QUESTION:** Are structural consultants needed for this solicitation?  
**ANSWER:** No structural consultants needed as these type of engineering details would go through the AVN Design and Construction Section.
14. **QUESTION:** Clarify that AVN is not necessarily looking for one big firm but a big firm that can do everything with some or a few pertinent subconsultants, is that fair to say?  
**ANSWER:** Yes, that is fair to say where we would assign work as needed essentially to one of the five firms selected that best fit the project that we are looking to complete.
15. **QUESTION:** Could you provide a list of current incumbent firms?  
**ANSWER:** Current contracted firms are: HDR Engineering, HNTB Corporation, Kimley-Horn and Associates, Landrum & Brown, Inc., and Ricondo & Associates.
16. **QUESTION:** I want to make sure I understand the type of work or type of projects assigned. Sounds like more of a planning and development phase that AVN goes through with airport planning concepts, reaching out to the community development, and maybe creating some documents or conceptual design, then it gets passed over to the design and construction team?  
**ANSWER:** If there is a design component, there are other teams at the airport that will do remodeling and architectural visioning. What we do are feasibility studies and then master planning and general visioning. Current projects that we are working on would be like a delay analysis or a parking master plan, so essentially, prep work for what the airport would look like and how we implement that.
17. **QUESTION:** Is there a size limit on the file or the PDF that we will be emailing?  
**ANSWER:** No file size limit, just the maximum page count.

**ATTACHMENT: DRAFT AVN AIRPORT PLANNING ON-CALL SERVICES CONTRACT**

All other terms and conditions remain unchanged.

A handwritten signature in black ink, appearing to read 'Annette Perez', with a horizontal line underneath.

Annette Perez  
Contracts Specialist  
CITY OF PHOENIX  
DESIGN AND CONSTRUCTION PROCUREMENT

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



**AVIATION DEPARTMENT  
AIRPORT PLANNING CONSULTING  
ON-CALL SERVICES  
FISCAL YEARS 2025/26 TO 2029/30**

**AGREEMENT \_\_\_\_\_**

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

## **RECITALS**

- A. The City Manager of the City of Phoenix, Arizona, is authorized and empowered by provisions of the City Charter and Code to execute Agreements for professional services.
- B. The City proposes to retain the Consultant for airport planning consulting services for the Aviation Department on an as-needed on-call basis.
- C. The City requires professional services for various City projects and desires to contract with the Consultant to provide these services.
- D. On \_\_\_\_\_, 20\_\_\_\_, the Phoenix City Council passed Ordinance S-\_\_\_\_, authorizing City to enter into this Master Agreement.

## **AGREEMENT**

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

### **SECTION 1 – PROJECT DESCRIPTION**

- 1.1 The City’s authorized contracting office will be the Office of the City Engineer. Requests for services will be issued in the form of a written Notice to Proceed document initiated by the Design and Construction Procurement Contracts Specialist, and will include a description of the Project, detailed scope of services, project schedule, and the approved fee. **The Consultant must receive notification from Design and Construction Procurement prior to negotiating fees and commencement of services on project assignments under this Master Agreement.** Work will be performed within the metropolitan Phoenix area.
- 1.2 The Consultant, under the general supervision of the City Engineer of the City of Phoenix, will perform the following services as may be requested: a range of airport planning functions and analysis related to airfield design; airspace analysis; facility planning; transportation planning; environmental policy and documentation; land use; grants administration; land compatibility; mapping; graphics; and public outreach; and other consulting related services.
- 1.3 General scope requirements and standards related to airport planning consulting on-call services are more fully described in Exhibit G – Scope of Work Services

Requirements and Standards.

## **SECTION 2 – PERIOD OF SERVICE**

### **2.1. Period of Service**

The Master Agreement is for a five-year term, commencing on July 1, 2025 through June 30, 2030. The Consultant will provide services under the Master Agreement for specific project assignments with a Notice to Proceed issued no later than the final day of the Master Agreement term. All work associated with the Project assignments under this Master Agreement must be completed no later than one year from the end of the Master Agreement term.

## **SECTION 3 – COMPENSATION AND PAYMENTS**

- 3.1 The maximum fee to be paid to the Consultant under this Master Agreement will not exceed \$4,000,000. The Consultant's Master Agreement fee may be increased by execution of a formal Master Agreement Amendment to cover project costs that have exceeded this limit.
- 3.2 Subconsultant fees are included as "Additional Services".
- 3.3 The fees for Consultant are based on the agreed hourly rates, attached and incorporated in **ATTACHMENT 1**. These rates will be in effect for the duration of the Master Agreement and project assignments term.
- 3.4 Consultant must submit monthly requests for payment on City's payment request form, which must include a progress report and detailed invoices (with receipts if applicable). Consultant's submittal must also include: (1) a narrative description of tasks accomplished during the billing period; (2) a listing of any deliverables submitted; and (3) any subconsultant's request for payment with similar narratives and listings of their work.
  - 3.4.1. City will pay for any services negotiated as a not-to-exceed fee according to the work effort expended on that service during the month.
  - 3.4.2. City will pay for any services negotiated as a lump sum according to the percentage of work completed during the month.
  - 3.4.3. City will pay for any Additional Services and Allowances as a not-to-exceed fee according to the work effort expended on that service during the month.
- 3.5 Consultant must submit all payment requests for City's review and approval.
- 3.6 Consultant must pay all sums due to subconsultants for services and reimbursable expenses within seven days of Consultant receiving payment for those services

from City. Consultant must pay subconsultants in accordance with Arizona Revised Statute § 34-221.

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

#### **SECTION 4 – CITY'S RESPONSIBILITY**

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



## **SECTION 5 – CONSULTANT’S RESPONSIBILITIES**

- 5.1. The Consultant must perform professional services to the satisfaction of the City Engineer in accordance with the terms of this Agreement with the degree and with the care and skill that a registered professional in Arizona would exercise under similar conditions. The Consultant may discuss the Project or its requirements with the department that will ultimately use the facility, but all specific project direction or requests must be authorized by the City Engineer.
- 5.2. Consultant must provide the following to City in each project proposal:
  - 5.2.1. Scope of Work
  - 5.2.2. Subconsultant Information
  - 5.2.3. Hourly Billable Rates
  - 5.2.4. Project Schedule
- 5.3. Consultant must prepare all documents and materials according to the City’s standards, scope, and budget, subject to the City Engineer’s general inspection.
- 5.4. Consultant must perform the professional services under this Agreement’s terms to the City Engineer’s satisfaction and with the care and skill that another consultant in Consultant’s industry would exercise under similar conditions.
- 5.5. Within 30 days of receiving City’s review comments, Consultant must submit to City the final set of plans that incorporates those comments. Consultant will provide bid phase services until City’s contract award to a construction contractor for the project.
- 5.6. Printed and bound - or electronic - copies of Consultant’s final drawings, plans, and specifications.
- 5.7. The documents prepared by the Consultant must not exceed the budget without express written approval from the City. The consultant, at the option of the City and without additional expense to the City, must without delay revise documents in a manner satisfactory to the City in an amount not exceeding the allocated budget.
- 5.8. City’s Project Management Information System
  - 5.8.1 The Consultant is required to maintain all Project records in electronic format. The City provides an Application Service Provider (ASP) web-based project management database which the Consultant shall utilize in the fulfillment of the Contract requirements.
  - 5.8.2 The Consultant shall use this ASP to process all documents related to the Work, including, but not limited to: requests for interpretation/information, change orders, design meeting minutes and submittals.

- 5.8.3 The Consultant shall process all Project information in electronic digital format. To fulfill this requirement, the Consultant shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to the web-based ASP and transfer electronic data.
- 5.8.4 The Consultant shall provide a computerized networked office platform with broadband internet connectivity. Either wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City's ASP system.
- 5.8.5 Training will be provided through the City. Contact information will be provided to the firms under contract, to establish the set up with a log-in and password.

## **SECTION 6 – DEFINITIONS**

### **AGREEMENT (OR MASTER AGREEMENT):**

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

### **AGREEMENT AMENDMENT:**

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

### **APPLICABLE LAW:**

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

### **A.R.S.:**

Arizona Revised Statutes.

### **CERTIFICATE OF INSURANCE:**

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

### **CITY:**

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

### **CONSULTANT OR CONTRACTOR:**

The individual, partnership, corporation or company who is entering into this Agreement

with the City.

**DAY(S):**

Calendar Days unless otherwise specifically noted.

**DEPARTMENT:**

Department means the City Department overseeing the Agreement.

**EFFECTIVE DATE OF THE AGREEMENT:**

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

**NOTICE TO PROCEED:**

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

**PAYMENT REQUEST:**

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

**SUBCONTRACT:**

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

**SUBCONSULTANT:**

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

**SECTION 7 – GENERAL CONDITIONS**

**7.1. INDEMNIFICATION AND INSURANCE REQUIREMENTS:**

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

**7.2. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER:**

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

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

### **7.3. LEGAL WORKER REQUIREMENTS:**

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

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

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

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

### **7.4. CONFIDENTIALITY AND DATA SECURITY:**

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

7.4.2. Consultant agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the

scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.

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

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

## **7.5. PROJECT DOCUMENT AND COPYRIGHTS**

7.5.1. City Ownership of Project Documents All work products (electronically or manually generated) including, but not limited to: plans, Specifications, cost estimates, tracings, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) file diskettes which reflect all final drawings, and other related documents which are prepared in the performance of this Contract (collectively referred to as "Documents") are to be and remain the property of the City and are to be delivered to the City Representative before the final payment is made to the Consultant. In the event these Documents are altered, modified or adapted without the written consent of the Consultant, which consent the Consultant will not unreasonably withhold, the City agrees to hold the Consultant harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adaptation of the Documents.

7.5.2. Consultant to Retain Copyrights The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Consultant, its subconsultants or personnel, during the course of performing this Contract or arising out of the Work will belong to the Consultant.

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

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

## **7.6. BACKGROUND SCREENING**

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

## **7.7. CONTACTS WITH THIRD PARTIES:**

- 7.7.1. Consultant or its subconsultants will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Consultant or its subconsultants be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Consultant or its subconsultants will promptly inform the City giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Consultant and its subconsultants under this Section will survive the termination of this Agreement.
- 7.7.2. Consultant agrees that the requirements of this Section will be incorporated into all subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 7.7.3. The obligations of Consultant under this Section will survive the termination of this Agreement.

## **7.8. RECORDS / AUDIT:**

- 7.8.1. Under generally accepted accounting principles, Consultant must keep records of: (1) accounts with the City; (2) direct personnel payroll; and (3) reimbursable expenses pertaining to the bond (construction) and insurance expenses for the contract. Consultant must make these records available to City for at least five years following Final Acceptance.
- 7.8.2. The City, its authorized representative, and/or the appropriate federal agency reserves the right to audit the records of Consultant and Subconsultants to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Agreement and related documents (e.g., modifications). If an audit reveals that a Consultant or Subconsultant(s) has provided false, misleading, or inaccurate cost and pricing data, City reserves the rights to: (1) decrease the Agreement's price; (2) reduce or withhold City's payments under the Agreement; or (3) demand reimbursement from Consultant. City reserves the right, at reasonable times, to audit Consultant's books and records relative to the performance of service under this Agreement.

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

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

## **7.9. COMPLIANCE WITH LAWS:**

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

## **7.10. ALTERATION IN CHARACTER OF WORK:**

Whenever a change in the scope of work results in a substantial revision to this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, an Agreement Amendment shall be approved and executed by the City and the Consultant. Such Agreement Amendment shall not be effective until approved by the City. Additions to, modifications, or deletions from the services provided herein may be made, and the compensation to be paid to the Consultant may accordingly be adjusted by mutual agreement of the parties. It is understood and agreed that no claim for extra work done or materials furnished by the Consultant will be allowed by the City except as provided herein, nor shall the Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Consultant without such written authorization first being given, shall be at the Consultant's own risk, cost,

and expense, and the Consultant hereby agrees that without written authorization the Consultant will make no claim for compensation for such work or materials furnished.

#### **7.11. INTEGRATION:**

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

#### **7.12. GOVERNING LAW; FORUM; VENUE:**

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

#### **7.13. TERMINATION OR SUSPENSION OF SERVICES:**

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

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

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

7.13.1.3. Appraise any work partially completed and submit that appraisal to City for evaluation.

7.13.1.4. Be paid full compensation for services performed to the date of its receipt of the Notice of Termination, including



reimbursement for all reasonable costs and expenses incurred by Consultant in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.

7.13.1.5. If the City determines it improperly terminated the agreement for cause or default, the termination shall be converted to a termination for convenience in accordance with the provisions of this agreement.

7.13.2. **TEMPORARY SUSPENSION:** The City may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and not due to fault or negligence of Consultant, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.

#### **7.14. SPECIFIC PERFORMANCE:**

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

#### **7.15. FORCE MAJEURE:**

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

#### **7.16. DOCUMENTATION:**

7.16.1. **DISSEMINATION AND RETENTION:** There will be no dissemination or publication of any information gathered, or documents prepared in the

course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Consultant will relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Consultant pending the resolution of the existing or anticipated litigation.

- 7.16.2. Format and quality: all documents prepared by Consultant will be prepared in a format and at a quality approved by the City.
- 7.16.3. Document review: Consultant will review all documents provided by the City related to the performance of the services and will promptly notify the City of any defects or deficiencies discovered in such review.
- 7.16.4. Confidentiality of plans: any plans Consultant generates must include the following statement in the title block on every page: "under Phoenix City Code § 2-28, these plans are for official use only and may not be shared with others unless otherwise permitted by contract to fulfill Consultant's obligations to City."

#### **7.17. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:**

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

#### **7.18. CONFLICTS OF INTEREST:**

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

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

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

#### **7.19. NOTICE:**

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

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

#### **7.20. PUBLIC RECORDS:**

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

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

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

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

#### **7.21. CLAIMS OR DEMANDS AGAINST THE CITY:**

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

#### **7.22. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:**

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

#### **7.23. DISPUTES:**

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

#### **7.24. THIRD PARTY BENEFICIARY CLAUSE:**

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

#### **7.25. LAWFUL PRESENCE REQUIREMENT:**

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

#### **7.26. EQUAL EMPLOYMENT OPPORTUNITY:**

- 7.26.1. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment

Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

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

employment without regard to their sexual orientation or gender identity or expression.

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

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

#### **7.27. SUCCESSORS AND ASSIGNS:**

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

#### **7.28. CONSULTANT'S DUTY OF CARE:**

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

#### **7.29. PROJECT STAFFING:**

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

7.29.2. **QUALIFIED STAFF:** Consultant must maintain an adequate and

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

#### **7.30. SUBCONSULTANTS:**

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

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

#### **7.31. NON-WAIVER PROVISION:**

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

#### **7.32. SURVIVAL:**

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

#### **7.33. SEVERABILITY:**

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

#### **7.34. TIME IS OF THE ESSENCE:**

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

#### **7.35. DATE OF PERFORMANCE:**

If the date of performance for any obligation—or the last day of any time period—falls on a Saturday, Sunday, or one of the City's holidays, then that period will extend to the next day that is not a Saturday, Sunday, or holiday. Unless otherwise provided, any performance due on a particular day is only timely if completed by 5



p.m. (Phoenix time) and no later.

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

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

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

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

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

#### **7.37. CONTRACT AMENDMENTS:**

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

#### **7.38. REQUEST FOR CONTRACT ADJUSTMENTS AND RELIEF:**

- 7.38.1 If either the Consultant or the City believes that it is entitled to relief against the other for any event arising out of or related to Contract Services, such party will provide written notice to the other party of the basis for its claim for relief.
- 7.38.2 Such notice will, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 7.38.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 7 Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

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

## **7.39. REPRESENTATIVES OF THE PARTIES:**

### **City's Representatives**

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

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

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

### **Consultant's Representatives**

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

Name, Title  
Firm Name  
Address  
City, Arizona 85XXX

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

## **7.40. NOTICES:**

### **General Notices**

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

## **7.41. NO ISRAEL BOYCOTT:**

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

#### **7.42 NO FORCED LABOR OF UYGHURS:**

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

#### **7.43 HEAT MITIGATION:**

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

- 7.43.1.1 Availability of sanitized cool drink water free of charge at locations that are accessible to all employees and contract workers.
- 7.43.1.2 Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- 7.43.1.3 Access to shaded areas and/or air conditioning.
- 7.43.1.4 Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.

- 7.43.1.5 Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
  - 7.43.1.6 Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.
- 7.43.2 The Consultant further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Consultant agrees to require all subconsultants, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Consultant to ensure compliance by its subconsultants.

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

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

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

By: \_\_\_\_\_  
Eric J. Froberg, PE, City Engineer

By: \_\_\_\_\_  
Name of Signatory, Title

ATTEST:

\_\_\_\_\_  
City Clerk

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

By: \_\_\_\_\_

## **EXHIBIT A**

### **INSURANCE AND INDEMNIFICATION REQUIREMENTS**

#### **1. DEFENSE AND INDEMNIFICATION CLAUSE:**

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

#### **2. CONSULTANT'S INSURANCE:**

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

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

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

limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met. (Projects on airside PSH\$A require \$5M; GYR/DVT \$3M)

#### **2.1.1. Commercial General Liability – Occurrence Form**

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

General Aggregate	\$2/\$3/\$5,000,000
Products – Completed Operations Aggregate	\$1/\$3/\$5,000,000
Personal and Advertising Injury	\$1/\$3/\$5,000,000
Each Occurrence	\$1/\$3/\$5,000,000

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

#### **2.1.2. Automobile Liability**

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

Combined Single Limit (CSL)	\$1/\$3/\$5,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.

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

### 2.1.3. Worker's Compensation and Employers' Liability

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

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

### 2.1.4. Professional Liability (Errors and Omissions Liability)

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

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

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

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

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

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

Each registered subconsultant will carry:

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



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

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

Each Claim \$2,000,000

Annual Aggregate \$2,000,000

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

All other registered subconsultants not listed above will carry:

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

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

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

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

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

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

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

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

## **EXHIBIT B**

### **AVIATION SECURITY PROCEDURES FOR CONSULTANT/CONTRACTOR AND SUBCONSULTANT/SUBCONTRACTOR WORKER BACKGROUND SCREENING**

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

Consultant/Contractor agrees that all Contract Workers that Consultant/Contractor allows to perform work under this Contract shall be subject to background and security checks and screening (Background Screening). Consultant/Contractor must pay for the cost of all Background Screenings, unless otherwise provided in the Scope of Work. Consultant/Contractor agrees that Background Screenings required by this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City does not warrant or represent that the minimum requirements are sufficient to protect Consultant/Contractor from any liability that may arise out of Consultant/Contractor's work under this Contract or Consultant/Contractor's failure to comply with this Section. Therefore, in addition to the Background Screening measures set forth below, Consultant/Contractor and its Contract Workers shall take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing work under this Contract.

As used in this Section, "Contract Worker" means a person performing work for the City, including (1) a person or entity that has a contract with the City, (2) a worker of a person or entity that has a contract with the City, (3) a worker of a subconsultant/subcontractor of a person or entity that has a contract with the City, and (4) a worker of a tenant of the City. (City of Phoenix A.R. 4.45)

##### **1.1. Legal Worker Background Check**

Pursuant to Arizona Revised Statutes (A.R.S.) § 41-4401, Consultant/Contractor must verify the legal Arizona worker status of each Contract Worker. Consultant/Contractor must conduct and all Contract Workers must pass a background check for their real identity and legal name prior to performing any work under this Contract.

##### **1.2. City Rights Regarding Security Inquiries**

In addition to a Legal Worker Background Check, the City reserves the right to require Consultant/Contractor to:

- 1.2.1. Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
- 1.2.2. Act on newly acquired information, whether or not the information should have been previously discovered;

- 1.2.3. Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and
- 1.2.4. Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

**1.3. Consultant's Certification**

By entering into this Contract, Consultant certifies that Consultant has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate, complete, and current. A Contract Worker that is rejected for work under this Contract shall not perform any work under any other contract or engagement Consultant has with the City without the City's prior written approval.

**1.4. Consultant's Contracts and Subcontracts**

Consultant/Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight services.

**1.5. Materiality of Background Screening Requirements and Indemnity**

The Background Screening requirements of this Section are material to the City's decision to enter into this Contract. Any breach of this Section by Consultant shall be deemed a material breach of this Contract. In addition to any other indemnification provision in this Contract, Consultant shall defend, indemnify, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses (Claims) arising out of this Background Screening Section, including the Consultant's disqualification of any Contract Worker or the City's failure to enforce this Section.

**1.6. Continuing Duty and Audit**

Consultant's obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Consultant shall immediately notify the City of any change to a Contract Worker's Background Screening. Consultant shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Consultant's compliance with this Section.

**2. CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS**

Consultant shall not allow a Contract Worker to begin work under this Contract until Consultant has completed the Background Screening required by the City and the City

has issued the appropriate airport security badge to the Contract Worker. The airport security badge will grant the Contract Worker unescorted access authority only to the area or areas of the Airport that the Contract Worker must enter in order to perform work under this Contract. When a Contract Worker's work in any area ends, the Contract Worker's access authority to that area ends. Any Contract Worker that attempts to enter a restricted area or sterile area, as those terms are defined below, of the Airport without proper authority is an immediate breach of this Contract.

### **3. SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS**

Each Contract Worker that needs unescorted access authority to a restricted or sterile area of the Airport in order to perform work under this Contract must receive a security identification display area (SIDA) badge from the Aviation Department's Public Safety and Security Division's Badging Office. Consultant must make arrangements with the City to have each Contract Worker proceed to the Badging Office for processing. The Badging Office will not issue a SIDA badge until the Contract Worker passes a fingerprint-based criminal history background check (CHRC) required by federal law (49 C.F.R. § 1542.209) and § 4-22(C) of the Phoenix City Code and passes a security threat assessment as mandated by the TSA through a security directive (49 C.F.R. § 1542.303). The Contract Worker shall comply with all requirements of and furnish all information requested by the Badging Office. Consultant shall pay for all fees associated with SIDA badging process, unless otherwise provided in the Scope of Work. Fees will be assessed according to § 4-22(D) of the Phoenix City Code. Current badging procedures and fees are available for review at <https://www.skyharbor.com/security/BadgingInformation>.

As used in this Section, "restricted area" means the secured area and SIDA area of the Airport. "Secured area" means the part of the Airport in which certain federal security measures are implemented and where airlines enplane and deplane passengers and load baggage. "SIDA area" means the secured area and other areas designated by the Aviation Department, which include air operation areas, ground transportation areas, and the Rental Car Center security doors. "Sterile area" means the part of the Airport that provides passengers access to board aircraft and is controlled by the TSA or the airline by screening of persons and property. See § 4-22 of the Phoenix City Code and Rules 05-01 and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms.

### **4. RISK-BASED BACKGROUND CHECK PROCESS**

The City has established two levels of risk for Contract Worker background checks: standard risk and maximum risk. If the Scope of Work changes, the City may change the level of risk, which may require Consultant/Contractor conduct additional investigations and incur additional costs in order to process a background check and obtain the required airport security badge. Contract Workers who receive a SIDA badge are exempt from a standard and maximum risk background check.

**A MAXIMUM RISK BACKGROUND CHECK is required for all non-exempt**

## **Contract Workers performing work under this Contract.**

As used in this Section, “background check” means the fact-gathering process described in City of Phoenix A.R. 4.45 that is conducted to obtain information regarding a Contract Worker’s legal Arizona eligibility, criminal history, driving history, certifications, and other matters that may affect the Contract Worker’s ability or fitness to perform work under this Contract.

- 4.1 Before any work is performed under this Contract, Consultant/Contractor shall provide the City with a list of its Contract Workers.
- 4.2 If any dispute arises related to a background check process or criminal history check information, then Consultant/Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.
- 4.3 In making the determination whether information in a background check renders the Contract Worker disqualified, Consultant/Contractor should be guided by the following principles and guidelines:
  - A. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.
  - B. Arrests that did not result in a conviction being entered or charges being filed may not be considered.
  - C. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.
  - D. Consultant/Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.
  - E. Consultant/Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:
    - Duties of the position
    - Time, nature, and number of negative events and convictions
    - Attempts and extent of rehabilitation efforts
    - The relation between the duties of the position and the nature of the crime committed
- 4.4 The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Consultant/Contractor should review the

background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract's requirements.

- 4.4.1 For a Contract Worker requiring a standard risk background check, potentially disqualifying convictions include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.
- 4.4.2 For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.
- 4.5 If a background check shows that the disposition of an arrest is unknown, then Consultant/Contractor must determine the disposition of the arrest.
- 4.6 Consultant/Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Consultant/Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)
- 4.7 In a standard risk background check, Consultant/Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Consultant/Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After Consultant/Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.
- 4.8 In a maximum risk background check, Consultant/Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Consultant/Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.
  - 4.8.1 If the City approves a Contract Worker, then the City will notify Consultant/Contractor of that fact and the Aviation Department will

issue the appropriate airport security badge to the Contract Worker.

4.8.2 If the City denies a Contract Worker, then the City will notify Consultant/Contractor of that fact and Consultant/Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If Consultant/Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Consultant/Contractor will discuss those circumstances with the City. The City will review the matter and its decision on disqualification is final.

4.8.3 The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.

4.9 If Consultant/Contractor is a sole proprietor, Consultant/Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

4.10 Consultant/Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

## **5. STANDARD RISK BACKGROUND CHECK**

A standard risk background check must be conducted for the term of this Contract or five (5) years, whichever is shorter. Consultant/Contractor shall conduct a standard risk background check on all Contract Workers whose work under this Contract requires:

- An airport security badge or key for access to City facilities,
- Access to sensitive information, confidential records, personal identifying information, or restricted City information, or
- Unescorted access to City facilities during normal and non-business hours.

“Personal identifying information” is defined by City of Phoenix A.R. 4.45.

### **5.1 Scope of the Standard Risk Background Check**

The standard risk background check conducted by Consultant/Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from any county in the United States, the state of Arizona, and any other jurisdiction where the Contract Worker has lived at any time in the last seven (7) years.



## **6. MAXIMUM RISK BACKGROUND CHECK**

A maximum risk background check must be conducted for the term of this Contract or five (5) years, whichever is shorter. Consultant/Contractor shall conduct a maximum risk background check on all Contract Workers whose work under this Contract requires:

- Working directly with a vulnerable adult or child under age 18,
- Any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation,
- Unescorted access to City data centers, money rooms, high-value equipment rooms,
- Access to a private residence,
- Access to Homeland Defense Bureau-identified critical infrastructure sites or facilities, or
- Responsibility or access to City-identified critical infrastructure sites, City networks or data, cyber/IT/network assets, digital or cyber assets, workstations, or servers, by either remote or direct access.

### **6.1 Scope of the Maximum Risk Background Check**

The maximum risk background check conducted by Consultant/Contractor must include the search criteria conducted under a standard risk background check in addition to a search for all felony and misdemeanor convictions (not including traffic or parking violations), a sex offender check, and a search for all outstanding warrants. Based on the Scope of Work, Consultant/Contractor shall also conduct a credit check (for cash handling, accounting, and compliance positions only), driving records check (for driving positions only), and fingerprint verification when the Contract Worker is working directly with a child under age 18 or a vulnerable adult or the work under the Contract will take the Contract Worker to a criminal justice information system (CJIS) location.

Maximum risk background checks are valid for the term of this Contract or three (3) years, whichever is shorter.

### **6.2 Maximum Risk Background Check for Child Care Staff Members**

If the Scope of Work of this Contract involves work as a child care staff member, then Consultant/Contractor will conduct a maximum risk background check.

### **6.3 Criminal Justice Information System (CJIS) Maximum Risk Background Check**

If the Scope of Work of this Contract requires unescorted access to a CJIS location or if Consultant/Contractor will have access to a CJIS infrastructure or information, then a CJIS maximum risk background check will be conducted, reviewed, and approved by the Phoenix Police Department or the Arizona Department of Public Safety.

**6.4 Maximum Risk Background Check for Children or Vulnerable Adults**

If the Scope of Work of this Contract involves work with a child under age 18 or a vulnerable adult, then Consultant/Contractor will conduct a maximum risk background check.

As used in this Section, “vulnerable adult” means an individual who is 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation by others because of a mental or physical impairment. (A.R.S. § 13-3623(F)(6) and City of Phoenix A.R. 4.45)

**7. AIRPORT SECURITY BADGE HANDLING PROCEDURES**

Consultant/Contractor will comply with the following airport security badge handling procedures:

- 7.1 Key Access Procedures.** If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued and Consultant/Contractor must complete a return form and submit it to the City for each key issued.
- 7.2 Stolen or Lost Badges or Keys.** Consultant/Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key
- 7.3 Return of Badges or Keys.** All airport security badges and keys are the property of the City and must be returned to the Badging Office within one (1) business day after the Contract Worker’s access to a City facility is no longer required under this Contract. Consultant/Contractor shall collect a Contract Worker’s airport security badge and all keys (1) when the Contract Worker’s employment is terminated, (2) when the Contract Worker’s services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.
- 7.4 Employee Identification and Access.** Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office. The Aviation Department will determine who will have access to the Airport. Contract Workers access authority is only valid during their scheduled hours. Consultant/Contractor shall provide the City with updates and changes in personnel as they occur.

7.5 **Badge Fees.** Consultant/Contractor shall pay the airport security badge fees set forth in § 4-22(D) of the Phoenix City Code.

**8. CONSULTANT/CONTRACTOR'S BREACH**

Consultant/Contractor agrees that the access control, airport security badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Therefore, Consultant/Contractor shall be deemed in immediate breach of this Section upon the occurrence of any of the following:

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person's airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport
- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key
- A Contract Worker or Consultant/Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Consultant/Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assignment to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first

**9. LIQUIDATED DAMAGES AND REMEDIES FOR BREACH**

In addition to any other remedy available to the City at law or in equity, including the right to terminate this Contract, Consultant/Contractor shall be liable for and shall pay to the City a stipulated damage in the amount of \$1,000.00 for each breach of this Section and for each time a Contract Worker entered a restricted or secured area of the Airport without proper authority. Consultant/Contractor agrees that the stipulated damage amount is not a penalty, but is a reasonable estimate of the actual harm to the City caused by a breach and that the harm was very difficult to estimate at the time this Contract was entered into.

**10. CONSULTANT / CONTRACTOR CERTIFICATION**

Consultant/Contractor certifies to the City that Consultant/Contractor has read the foregoing Background Screening requirements and that all Background Screening information Consultant/Contractor furnished to the City is accurate, complete, and current. Consultant/Contractor further certifies to the City that Consultant/Contractor has satisfied all Background Screening requirements and verified the legal worker status of each Contract Worker as required under this Section.

## **EXHIBIT C**

### **DESIGN AND CONSTRUCTION SERVICES CONSULTANT AND CONTRACTOR TRAVEL REIMBURSEMENT PROCEDURE**

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

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

#### **Reimbursable Expenses and Reimbursement Limits**

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

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

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

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

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

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

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

- Reimbursement will not exceed the applicable seasonal rate listed in the City of Phoenix Domestic Lodging Rate Schedule, as indicated below:
  - September 1 through January 31                      \$172
  - February 1 through March 31                      \$259
  - April 1 through May 31                      \$173
  - June 1 through August 31                      \$121
- Charges to the Consultant's/Contractor's hotel room for project-related expenses, such as for fax, internet access, and long-distance calls, must be itemized and categorized appropriately on the invoice submitted for reimbursement.
- Non-project-related charges, such as for movies, room service, or "mini-bar" items, are not reimbursable.

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

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

- Max Daily M&IE Rate                      \$86 – Full Day / \$64.50 - First/Last Day

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

- Meals - Reimbursement for meal gratuities will not exceed 20% of the pre-tax bill. In no event will total reimbursement for meals, meal taxes, and meal gratuities exceed the GSA meal limits described above.
- Taxis - Reimbursement for taxi gratuities will not exceed 20% of the pre-tax bill.
- Baggage Handling and Housekeeping - Total reimbursement for baggage handling and housekeeping gratuities will not exceed \$5 per day. Receipts for baggage handling and housekeeping gratuities are not required. However, tips not paid must not be submitted for reimbursement.

### **Travel Expense Report Submittal**

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

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

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

## **EXHIBIT D**

### **COMPLIANCE WITH ENVIRONMENTAL LAWS**

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

#### **1. Definitions**

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.

F. Clean Air Act, 42 U.S.C. §§ 7401-7515.

G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.

H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.

I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.

J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.

K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.

L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.

M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).

N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.

O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.

P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.

Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.

R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).



S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.

T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).

U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be

completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

## 2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated

Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to

the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

### 3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice

thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point

source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix

City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City's project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a "co-permittee" with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor's written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports' SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor's use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector

General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

#### 4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance



with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Revised May 2022  
2321602

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**EXHIBIT E**

**SBE/DBE REQUIREMENTS**

**(NOT USED)**

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## **EXHIBIT F**

### **SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS**

#### **1. Definitions**

**1.1** "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

**1.2** "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

**1.3** "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

**1.4** "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

#### **2. Federal Aviation Administration (FAA) Grant Assurances**

**2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11**

During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

**1. Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**2. Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate, directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

**3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of the Contractor's obligations under this Contract and Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**4. Information and Reports.** The Contractor will provide all information and reports required by the Acts and Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Phoenix or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City of Phoenix or the Federal Aviation Administration, as appropriate, and will set forth what efforts it Contractor has made to obtain the information.

**5. Sanctions for Noncompliance.** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(i) Withholding payments to the Contractor under the Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

**6. Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the Federal Aviation Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **2.2. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances:

A. Contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits or similar documents, in the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess said lands and facilities thereon, and hold the same as if this Contract had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the City of Phoenix and its assigns.

## **2.3 CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The grantee, licensee, permittee or as appropriate, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use

of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee, licensee, lessee, permittee, or similarly situated person will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

B. With respect to licenses, leases, permits, or other similar documents, in the event of breach of any of the above Non-discrimination covenants, the City will have the right to terminate the license, permit, or other similar documents, and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said license, permit, or other similar documents had never been made or issued.

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the City will there upon revert to and vest in and become the absolute property of the City and its assigns.

#### **2.4. General Civil Rights Provisions (49 U.S.C. § 47123) Used for Contracts, Lease Agreements, and Transfer Agreements**

**A. General Civil Rights Provisions:** In all its activities within the scope of its airport program, Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by title VI of the Civil Rights Act of 1964.

##### **1. Specific Clause that Is Used for General Contract Agreements:**

The above provision binds Contractor and subcontractors from the bid solicitation period through the completion of this Contract.

##### **2. Specific Clause that Is Used for Lease Agreements or Transfer Agreements:**

If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor.

The above provision obligates Contractor for the period during which the property is owned, used or possessed by Contract and the City of Phoenix remains obligated to the Federal Aviation Administration.

## **2.5 Economic Nondiscrimination – 49 U.S.C. § 47107**

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

**A.** Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

**B.** Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

## **2.6 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26**

**A. Contract Assurance (§ 26.13).** To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation (DOT) regulations at 49 C.F.R. Part 26.

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

**B. Prompt Payment (§ 26.29).** Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later

than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

## **2.7 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23**

**Contract Assurance (§ 23.9).** To the extent that this Contract is a concession agreement subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, the Concessionaire or Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. The concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

## **2.8 Miscellaneous**

**A.** Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

**B.** City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

**C.** The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.



**D.** Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

**E.** This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

**F.** Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

**G.** Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

**H.** Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

**I.** This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and

taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

**J.** If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

**K.** Contractor is encouraged to use fuel and energy conservation practices.

### **3. Immigration Reform and Control Act of 1986 (IRCA)**

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

### **4. Conflict of Interest**

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

### **5. Legal Worker Requirements**

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; E-Verify program). Therefore, Contractor agrees that:

**A.** 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 § 23-214(A).

**B.** A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

**C.** The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

### **6. City of Phoenix Equal Employment Opportunity Requirement**

**6.1** If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract 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 supplier and/or lessee shall 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 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.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee 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.”

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

**6.3 Monitoring.** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

## **7. Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this Contract, Contractor, for itself, its assignees, and successors interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high

and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

**8. Contractor Requirements for the Mitigation of Heat-Related Illnesses and Injuries in the Workplace, Phoenix City Code Sec. 18-411**

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The city may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

**A.** Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.

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

**C.** Access to shaded areas and/or air conditioning.

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

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

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

**G.** The contractor further agrees that this clause will be incorporated

in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the contractor to ensure compliance by its subcontractors.

2438541  
Revised 5/22/2024

**EXHIBIT G**

**SCOPE OF SERVICES REQUIREMENTS AND STANDARDS**

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**ATTACHMENT 1**

**BILLABLE RATES**

**FIRM HOURLY BILLABLE RATES**

.....	\$
.....	\$
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.....	\$
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**ATTACHMENT 2**  
**INSURANCE CERTIFICATES**

**(ATTACHED)**

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