



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

**PUBLIC TRANSIT DEPARTMENT
HIGH-CAPACITY TRANSIT
MATERIALS TESTING ON-CALL SERVICES
for
CALENDAR YEARS
2026-2030**

NOTIFICATION LETTER NO. 1

04/15/2025

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

1. Section III - Statement of Qualifications Evaluation Criteria, delete B. Experience of Key Personnel, and replace with the following:

B. Experience of the Key Personnel (maximum 300 points)

Describe the experience and qualifications of the key personnel expected to be assigned and the firm's plan to maintain continuity of staffing for the proposed Field Services and Laboratory Services.

For each key FIELD person identified provide:

1. Name of Field Personnel
2. Length of time with the firm, length of time in the industry
3. Any Certification/Qualifications
4. Experience related to the solicited services (comparable projects)
5. Role the team member will provide for the proposed services

For each key LABORATORY person identified provide:

1. Name of Field Personnel
2. Length of time with the firm, length of time in the industry
3. Any Certification/Qualifications
4. Experience related to the solicited services (comparable projects)
5. Role the team member will provide for the proposed services

2. Section III - Statement of Qualifications Evaluation Criteria, delete C. Laboratory Testing and Responsiveness, and replace with the following:

C. Laboratory Testing and Responsiveness (maximum 250 points)

As part of our selection process, the City has the responsibility of considering the possibility of the firm receiving multiple task assignments under this agreement overlapping the same time period, in addition to any other on-going work the firm may have.

Provide an explanation of how your firm will approach laboratory testing of concrete, asphalt, and soils for the proposed services (IE: Providing expedited services (quick turn-around times) and deliverables, prioritizing staffing in relation to importance of assigned projects and schedule requirements).

Also provide an explanation of the firm's accreditation and compliance, testing capabilities & technology, quality control & data integrity, turnaround & responsiveness, and cost & efficiency.

Questions received at and since the pre-submittal meeting and associated responses:

1. Q. Will there be an allowance for any type of markup to encourage DBE usage?

A: No

2. Q. The Plan Review position is under which contract?

A: Plan Review position is under both Materials Testing and CA&I contracts.

3. Q. Is the 7.84% aspirational goal just for DBEs or is it combined with SBEs?

A: Only DBEs can be counted towards the aspirational goal.

4. Q. If a firm is not selected as a prime, can it still be added to the contract as a subcontractor with another prime?

A: Yes

5. Q. When will the current Light Rail Transit contract for the South-Central Extension Downtown Hub end?

A: When the South-Central Extension Downtown Hub project is complete, which is expected to end by December 2025. This procurement is only for CAPEX and 10West.

6. Q. Is there a dollar amount on this contract?

A: The budget for Materials Testing is \$30 million and the budget for CA&I is \$30 million. The dollar amount for each contract category may differ.

7. Q. If a SBE is in the process of becoming DBE certified, do they need to be DBE certified to submit an SOQ?

A: No. However, for the SBE firm to be counted towards the aspirational goal, the SBE firm will need to become DBE certified.

8. Q. Does the DBE firm need to be in Phoenix?

A: The DBE firm needs to be certified in Arizona and able to perform work in Phoenix.

9. Q. Regarding the EO2 form, how many DBE firms do you need to contact to be considered responsive?

A: Minimum of 1. However, more outreach is encouraged.

10. Q. Regarding the percentage participation on the EO3 form, is this goal a requirement?

A: The percentage you list would be your firm's DBE participation goal.

11. Q. The forms that were sent with this solicitation are different than forms that were previously used. Which ones should we submit?

A: Submit the forms included in the RFQs.

12. Q. Who signs the EO3 form?

A: The form should be signed by a firm representative.

13. Q. Where should the subcontractor information be added in the SOQ?

A: The RFQ requests information about the prime firms. It is up to each responding firm where to list any information about subconsultants.

14. Q. On the Materials Testing RFQ, are sections B and C the same thing?

A: No. Section B addresses the qualifications of the staff who will be working in the field, while Section C pertains to the qualifications of the laboratory and responsiveness.

15. Q. In the selection process it states up to 10 consultants but no more than 12. Is it up to 12 or up to 10?

A: Up to 10 firms may be selected for each category. Typically two more will be shortlisted in case any of the 10 firms cannot agree to the terms of the agreement.

16. Q. Regarding the FTA Clause Forms, there are nine forms, but only five that are applicable. Do we need to sign/submit all nine forms?

A: Yes, all nine forms must be signed and submitted to be considered responsive.

17. Q. Is it “Buy American” as the slide shows or “Buy America”?

A: Buy America. Read all the federal forms closely. The PPT has been corrected.

18. Q. Will the cover letter count against the 12-page maximum?

A: A cover letter will count towards the page count. If a submittal is over 12 pages, any additional pages will be removed and will not be provided to the panel.

19. Q. Can we get confirmation that the SOQ was received?

A: Yes, we can give confirmation when the SOQ is received.

20. Q. How many firms are on the current contracts?

A: There are eight Materials Testing firms and eight CA&I firms on the current contracts.

21. Q. If a firm is already DBE certified, do they still need to do DBE Outreach and submit the EO1, EO2, and EO3?

A: Yes, DBE outreach and submission of the EO1, EO2, and EO3 are still required. A DBE firm cannot count their own DBE status towards the aspirational goal.

22. Q. If a firm does not list a DBE firm in their SOQ, can they use a DBE further into the contracting process?

A: Yes, that would be part of the outreach process when resumes are requested.

23. Q. Regarding EO1, EO2, and EO3 forms, can the firm stack them together as a separate attachment when SOQ is submitted?

A: Yes.

24. Q. If a DBE firm is certified in another state, can we use them?

A: Yes. However, they will not count towards the DBE aspirational goal.

25. Q. Regarding the EO3. What happens if the DBE firm that was reached out to is non-responsive?

A: Your firm must still complete EO2 and EO3 and attach your firm's supporting documentation showing your outreach efforts to the DBE firm.

26. Q. Are these contracts going to be posted in OpenGov?

A: No. This is the last procurement posted in the eProcurement/RFx system.

27. Q. Do subconsultants need a Vendor Number?

A: No. Only the prime firm submitting the SOQ needs a vendor number.

28. Q. When submitting the SOQs, should they be emailed or submitted through RFX?

A: SOQs must be emailed to the assigned Contracts Specialist per the RFQ at: elena.rozenblum@phoenix.gov

29. Q. Will this presentation be sent out?

A: No. The PPT presentation is available for viewing or download at: <https://solicitations.phoenix.gov/Solicitations/Details/2098> and <https://solicitations.phoenix.gov/Solicitations/Details/2097>

30. Q. What is the length of the contract?

A: Five years, starting January 1, 2026.

31. Q. Firms can submit a SOQ to be a prime contract but can also be listed as a subconsultant on a different firm's SOQ which is pursuing a prime contract. This is allowable and will not be viewed negatively or a reason for disqualification, correct?

A: Correct. Firms can be listed as subconsultants for other firms pursuing a prime contract and will not be viewed negatively or be a reason for disqualification. Just as is the case for a certified DBE firm. A certified DBE firm can submit as a prime and be listed for a different firm that is pursuing a prime contract and will not be viewed negatively or is a reason for disqualification.

32. Q. If a consultant is involved with the design or construction of any of the facilities covered by this on-call, would this be deemed a conflict of interest and make them ineligible to pursue this contract?

A: There is no conflict between Design and CA&I. There would be a conflict if the consultant is on the construction side, so it would be a conflict between construction and CA&I.

33. Q. On Page 3 of the Materials Testing RFQ, Section B, and a portion of Section C, request the exact same information. In Section B, titled "Experience of the Key Personnel", the proposer is asked to identify and discuss the proposed Key Personnel. The information requested in Section B is clear and understood. Section B would result in a full and comprehensive discussion on all Key Personnel. Section B is fine, and no clarification is needed. However, Section

C, titled "Laboratory Testing and Responsiveness", again asks the proposer to identify and discuss key personnel. This appears to be an oversight. A related question was asked during the preproposal meeting today, 4/7/25, and from the verbal answer, it sounded like the City's actual intent was that the proposer would identify and elaborate on the company's laboratory credentials and service capability, and their ability to provide those services through this contract. Please confirm that in Section C the highlighted text should either be deleted, or should be modified to ask for Laboratory credentials and capabilities, and not be a restatement of Section B.

A: See above for revision of evaluation criteria.

34. Q. If a consultant is involved with the design or construction of any of the facilities covered by this on-call, would this be deemed a conflict of interest and make them ineligible to pursue this contract?

A: There is no conflict between Design and CA&I. There would be a conflict if the consultant is on the construction side, so it would be a conflict between construction and CA&I.

35. Q. For firms selected for this contract, will they still be able to pursue design contracts for the City? For instance, if selected, would a firm still be able to pursue a BRT project for design?

A. Yes.

36. Q. If a firm was selected for BRT project design service, would they be able to continue providing CA&I services for other City projects on the High-Capacity Transit On-Call and only be conflicted from providing CA&I on the BRT project they designed?

A. There is no conflict between Design and CAI services.

37. Q. What firms hold the current contracts?

A. CA & I: Consultant Engineering, Inc., Consor Engineers, Entellus, Infernix, Trace Consulting, Tristar Engineering, Wood Patel & Associates, and WSP USA / Materials Testing: Alta CMTI, dba Alta Arizona, Ninyo & Moore, Quality Testing, Smith & Annala Engineering, Speedie & Associates, Terracon Consultants, Western Technologies and WSP Environment & Infrastructure (formerly Wood Environment & Infrastructure Solutions.

38. Q. Will the City of Phoenix provide an example contract for these solicitations?

A. Attached is a draft/sample contract for on-calls.

39. Q. Related to FTA Exhibit B forms, confirm whether the entirety of Exhibit B must be included in the offeror's submittal or if just the FTA Certifications on RFQ pdf pages 60-69 need to be included.

A. See Section IV – Submittal Requirements for documents due at time of submittal. For further clarification, contact Val Williams at valeria.williams@phoenix.gov or 602-534-2667 for guidance on how to complete and submit DBE documents.

40. Q. The RFx notes that each of the EO forms, the FTA forms, and the SOQ should be submitted as separate PDFs totaling five (5) PDFs. Please confirm if the City expects five separate PDFs per submittal or if three PDFs (all EO forms, FTA forms, and SOQ submittal) are acceptable.

A. Two PDFs are acceptable. The SOQ should be one PDF. All EO and FTA documents should be a second separate PDF.

41. Q. The RFx notes "Additional Content: Resumes and other information may be included (content shall be included within the permitted maximum page limit)." However, the pre-submittal presentation (Slide 41/57) notes that resumes are excluded from the 12-page limit. Please clarify whether resumes are included or excluded in the page count.

A. Resumes are not needed at time of SOQ submittal. Any resumes included in the SOQ will be counted towards the page count. Resumes will be requested by Public Transit Department staff with each project.

42. Q. For the E01, E02, and E03 forms required with our submittal, the forms are asking for a Project Number. Since there is no Project Number on the RFQ, should we use the RFx number instead?

A. The On-Calls do not have a project number. The RFx number can be used but is not required.

43. Q. On Form EO2, it states "Sections A, B, and C must be completed for **all businesses** being proposed by the respondent(s)." We are pursuing subconsultants which are not DBE, SBC, or SBE certified, but does the statement "all businesses" mean that we need to complete a Form EO2 for non-DBE/non-SBC/non-SBE firms?

A. The EO2 form is to be completed for any proposed business to perform work. As the DBE on the project, you would complete a form identifying yourself as the DBE. In addition, you would complete forms also for any firm you anticipate using on the project. In section E, there is an explanation box, and you would complete this. To reiterate, in planning, you would complete

EO2 forms for the entity or individual in which you get your subconsultants. But address each question as any blank spaces may be deemed non-responsive.

44. Q. We are a DBE and pursuing this contract as a prime. Should we complete EO2 & EO3 forms for our own company as well as any DBE/SBC subconsultants we will be adding to our SOQ? Or do we just have to complete them for our subs?

A. Yes, you would complete the form providing information for your firm. The other subcontractors will help to meet your outreach efforts. So again, include them as well.

45. Q. For Form EO2, please confirm that Section D is to remain empty when submitted with the SOQ. That this section is intended to be utilized if awarded the contract and we are soliciting our subconsultants in the future.

A. You would not leave this blank; it should note the communication made.

46. Q. For Form EO2, please confirm that Section E is to remain empty when submitted with the SOQ. That this section is intended to be utilized if awarded the contract and we are soliciting our subconsultants in the future.

A. Complete.

47. Q. For Form EO2, please confirm that Section F is to remain empty when submitted with the SOQ. That this section is intended to be utilized if awarded the contract and we are soliciting our subconsultants in the future.

A. Complete.

48. Q. If we include a picture (not a chart or graph) on the cover, table of contents, or information page, will such pages then be counted toward the maximum page limit?

A. Pictures on the front and back covers are acceptable as long as they do not include project information or anything that can be considerable reviewable/ratable by the evaluation panel. See RFQ for additional submittal guidance.

49. Q. Confirm whether the entirety of Exhibit B must be included in the offeror's submittal or if just the FTA Certifications on RFP pdf pages 60-69 need to be included.

A. The certifications (as applicable) must be signed at the time of submission for the offer to be determined responsive to the solicitation, just as with any submittal.

50. Q. Confirm that a Signature is expected on all FTA Exhibit B forms and that the Offeror can mark "N/A" or "Not Applicable" in areas that we do not anticipate being applicable to this contract.

A. Providing the correct certifications are submitted and signed, the "not applicable" certifications do not need to be signed and/or offerors can write N/A. However, if they incorrectly identify a certification requirement, they could be deemed non-responsive for failing to submit and sign all applicable certifications.

All other terms and conditions remain unchanged.

Attachment: Draft Sample On-Call Contract

ELENA ROZENBLUM
CONTRACTS SPECIALIST II
CITY OF PHOENIX
DESIGN AND CONSTRUCTION PROCUREMENT

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



**MATERIALS TESTING/CONSTRUCTION ADMINISTRATION AND INSPECTION
ON-CALL SERVICES
FOR CALENDAR YEARS 2026-2030**

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 January 1, 2026 ("**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 Materials Testing/Construction Administration and Inspection On-Call consulting services for the Public Transit Department's High-Capacity Transit program 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 _____, 2025, the Phoenix City Council passed Ordinance S-_____, authorizing City to enter into this Master Agreement for five years and \$_____.

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 Public Transit Department. Requests for services will be issued in the form of a written Notice to Proceed document initiated by the Public Transit Department's Representative and will include a description of the Project, detailed scope of services, project schedule, and the approved fee. **The Consultant must receive notification from the Public Transit Department's Representative 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 (as applicable per contract): CA&I - Scope of work may include, but is not limited to, representation on behalf of the City of Phoenix for full range of Civil and Water inspection services during the construction phase to ensure compliance with City of Phoenix, Maricopa County, and Valley Metro standards, policies, and guidelines. Inspections will include roadway, alley, water, sewer, dry utilities, landscape and irrigation, irrigation facilities, site, storm drain, retentions, embankments, earthwork, trenching, grading, soil treatments, masonry, structural steel, bridge/structures, sidewalk, ADA ramps, curb & gutter, driveways, and temporary traffic control for compliance to applicable standards. / Materials Testing - Scope of work may include, but is not limited to geotechnical investigations, geotechnical and materials testing; laboratory and field

testing of soil, concrete and asphalt; plant inspections; analyses and preparation of reports; and daily oversight to ensure compliance with Federal, State, City of Phoenix, Maricopa County and Valley Metro standards, policies and guidelines. Materials testing will include roadway, guideway, alley, water, sewer, dry utilities, landscape and irrigation, irrigation facilities, site, storm drain, retentions, embankments, earthwork, trenching, grading, soil treatments, masonry, structural steel, bridge/structures, sidewalk, ADA ramps, curb & gutter, and driveways for compliance with standard details, specifications, and approved plans.

SECTION 2 – PERIOD OF SERVICE

2.1. Period of Service

The Master Agreement is for a five-year term, commencing January 1, 2026 through December 31, 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 [Insert Contract Capacity Amount \$X,XXX,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. The documents prepared by the Consultant must not exceed the budget without express written approval from the City. The consultant, at the option of the City and without additional expense to the City, must without delay revise documents in a manner satisfactory to the City in an amount not exceeding the allocated budget.
- 5.6 City’s Project Management Information System
 - 5.6.1 The Consultant is required to maintain all Project records in electronic format. The City provides an Application Service Provider (ASP) web-based project management database which the Consultant shall utilize in the fulfillment of the Contract requirements.
 - 5.6.2 The Consultant shall use this ASP to process all documents related to the Work, including, but not limited to: requests for interpretation/information, change orders, design meeting minutes and submittals.
 - 5.6.3 The Consultant shall process all Project information in electronic digital format. To fulfill this requirement, the Consultant shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to the web-based ASP and transfer electronic data.
 - 5.6.4 The Consultant shall provide a computerized networked office platform with broadband internet connectivity. Either wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City’s ASP system.
 - 5.6.5 Training will be provided through the City. Contact information will be

provided to the firms under contract, to establish the set up with a log-in and password.

SECTION 6 – DEFINITIONS

AGREEMENT (OR 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 Master Agreement on which it becomes effective.

NOTICE TO PROCEED:

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

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

7.10. ALTERATION IN CHARACTER OF WORK:

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

7.11. INTEGRATION:

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

7.12. GOVERNING LAW; FORUM; VENUE:

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

7.13. TERMINATION OR SUSPENSION OF SERVICES:

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

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

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

7.14. SPECIFIC PERFORMANCE:

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

7.15. FORCE MAJEURE:

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

to the period of delay.

7.16. DOCUMENTATION:

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

7.17. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:

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

7.18. CONFLICTS OF INTEREST:

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

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

7.19. NOTICE:

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

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

7.20. PUBLIC RECORDS:

- 7.20.1. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Consultant acknowledges that all documents provided to the City may be subject to disclosure by laws related to public records. Consequently, the Consultant understands that disclosure of some or all of the items subject to this Agreement may be required by law.
- 7.20.2. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which will be deemed given when deposited by the City with the USPS for regular delivery to the address of the Consultant specified in this

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

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

7.21. CLAIMS OR DEMANDS AGAINST THE CITY:

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

7.22. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:

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

7.23. DISPUTES:

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

7.24. THIRD PARTY BENEFICIARY CLAUSE:

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

7.25. LAWFUL PRESENCE REQUIREMENT:

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

7.26. EQUAL EMPLOYMENT OPPORTUNITY:

- 7.26.1. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
- 7.26.2. For a Consultant with 35 employees or fewer: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Consultant will ensure that applicants are

employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, Consultant agreements or subleases of this agreement entered into by supplier/lessee.

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

7.27. SUCCESSORS AND ASSIGNS:

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

7.28. CONSULTANT'S DUTY OF CARE:

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

7.29. PROJECT STAFFING:

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

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

7.30. SUBCONSULTANTS:

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

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

7.31. NON-WAIVER PROVISION:

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

7.32. SURVIVAL:

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

7.33. SEVERABILITY:

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

7.34. TIME IS OF THE ESSENCE:

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

7.35. DATE OF PERFORMANCE:

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

7.36. WORK IN CITY’S RIGHT-OF-WAY:

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

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

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

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

7.37. CONTRACT AMENDMENTS:

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

7.38. REQUEST FOR CONTRACT ADJUSTMENTS AND RELIEF:

- 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, 5th Floor
Phoenix, AZ 85003

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

Consultant's Representatives

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

Name, Title
Firm Name
Address

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.

2.1.1. Commercial General Liability – Occurrence Form

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

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

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

2.1.2. Automobile Liability

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

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

2.1.3. Worker's Compensation and Employers' Liability

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

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

2.1.4. Professional Liability (Errors and Omissions Liability)

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

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

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

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

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

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

Each registered subconsultant will carry:

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

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

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

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

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

All other registered subconsultants not listed above will carry:

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

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Agreement, the Consultant must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or

cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **Design and Construction Procurement, 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003.**

- 2.3. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- 2.4. VERIFICATION OF COVERAGE:** Consultant must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

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

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

EXHIBIT B

BACKGROUND SCREENING

(DOES NOT APPLY)

EXHIBIT C

TRAVEL REIMBURSEMENT PROCEDURE

(WILL BE ATTACHED IF REQUIRED FOR CONTRACT)

EXHIBIT D

DEPARTMENT SPECIFIC REQUIREMENTS

(NOT APPLICABLE)

EXHIBIT E

DBE REQUIREMENTS

(WILL ATTACHED DBE CLAUSE AND FORMS)

EXHIBIT F

SUPPLEMENTAL TERMS AND CONDITIONS

(WILL INCLUDE FTA DOCUMENTS HERE)

ATTACHMENT 1

BILLABLE RATES

FIRM HOURLY BILLABLE RATES

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

ATTACHMENT 2
INSURANCE CERTIFICATES
(ATTACHED)