

AGREEMENT NO. _____

BETWEEN

THE CITY OF PHOENIX

AND

**FOR THE BUS OPERATIONS CONTROL CENTER (OCC)
AND DATA COLLECTION SERVICES**

THIS AGREEMENT is made and entered into this ____ day of ____, 2019, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona acting by and through its Public Transit Department (hereinafter referred to as “CITY”) and _____ (hereinafter referred to as “CONTRACTOR”).

RECITALS

WHEREAS, the City Manager of the City of Phoenix is authorized and empowered by provisions of City Charter to execute Agreements for professional services; and,

WHEREAS, CITY seeks a CONTRACTOR to manage the Operations Control Center and Data Collection Services functions set forth in this Agreement; and,

WHEREAS, the CITY has issued its solicitation document, Request for Proposals (RFP PTD19-008) for the Bus Operations Control Center and Data Collection Services; and,

WHEREAS, the Offer of _____ and the subsequent terms and conditions were authorized by Formal Action of the City Council dated _____;

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

SECTION 1. TERM OF AGREEMENT

- A. The term of this Agreement shall be for a five (5) year period commencing on July 1, 2020 and continuing through June 30, 2025. In addition to the initial term, there is one (1) additional two (2) year option period which, if exercised, will extend this Agreement through June 30, 2027, for a total contract term of seven (7) years. The option to extend may be exercised by the CITY, acting at its sole discretion, at any time prior to the expiration of the term then existing.
- B. This Agreement terminates upon the earliest occurrence of any of the following:
 - 1) reaching the end of the term as set forth in 1(A);
 - 2) completing the services set forth in the Scope of Work attached as **CONTRACT EXHIBIT A** (the “Services”);
 - 3) payment of the maximum compensation under Section 2(A) of this Agreement, unless it is amended to allow additional compensation; or

4) termination pursuant to the provisions of this Agreement.

SECTION 2. COMPENSATION

- A. Under this Agreement, CITY will pay for satisfactory and complete performance of work at the rate(s) specified in the Fee Schedule (**EXHIBIT B**), with no additional charges for equipment, supplies, overhead, travel or administrative support. Total amount to be remitted by the CITY to CONTRACTOR for all services satisfactorily performed under this Agreement may not exceed \$_____ for the seven (7) year term of the Agreement.
- B. CONTRACTOR shall be paid on a monthly basis in arrears. CONTRACTOR shall submit one (1) invoice for services provided during the previous month. CONTRACTOR shall invoice the CITY one-twelfth (1/12) of the total annual cost on a monthly basis. Invoice must be submitted to the CITY by the 10th day of the month following the period in which services were performed and must contain date, agreement number, supporting documentation, and invoice amount. Advance payments are not authorized. Payment will be made only for actual services that have been received.
- C. CONTRACTOR shall submit an invoice free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the CITY will return the invoice to CONTRACTOR. CONTRACTOR shall promptly resubmit the revised invoice to the CITY. Failure to identify an error does not waive any of the CITY'S rights.
- D. In accordance with the requirements of Chapter 19, § 2, Charter of the City of Phoenix, no more than ninety (90%) percent of the total contract price may be paid before completion of all work to be performed under this Agreement and its acceptance by CITY.

Invoices shall be submitted to:

City of Phoenix/Public Transit Department
Attn: Deputy Public Transit Director – Operations
302 North First Avenue, Suite 900
Phoenix, Arizona 85003

A “remit to” address must also be on the invoice and must match the address on file with the CITY. Any changes to the remit to address must be updated by the vendor in its ProcurePHX vendor profile at <https://www.phoenix.gov/procure>.

SECTION 3. SCOPE OF WORK

CONTRACTOR shall provide the services for the Operations Control Center and Data Collection Services to the CITY in accordance with the Scope of Work as set forth in **CONTRACT EXHIBIT A**, which may be supplemented with additional detail from time to time during the term of the Agreement if and as satisfactory to the CITY.

SECTION 4. INDEMNIFICATION OF CITY AGAINST LIABILITY

CONTRACTOR (“Indemnitor”) must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (“Claims”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of CONTRACTOR or any of its owners, officers, directors, agents, employees or subcontractors in

connection with this Contract. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of CONTRACTOR to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. CONTRACTOR must indemnify Indemnatee from and against any and all Claims, except those arising solely from Indemnatee's own negligent or willful acts or omissions. CONTRACTOR will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, CONTRACTOR agrees to waive all rights of subrogation against Indemnatee for losses arising from the work performed by CONTRACTOR for the CITY. The obligations of CONTRACTOR under this provision survive the termination or expiration of this Contract.

SECTION 5. INSURANCE REQUIREMENTS

CONTRACTOR and its subcontractors shall deliver to the CITY, before commencement of the Services provided under this Agreement, a certificate of insurance acceptable to the CITY in the amounts and form specified in **CONTRACT EXHIBIT C**. Failure of CONTRACTOR and its subcontractors to maintain insurance during the term of the Agreement, including renewal options, is a material breach and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the CITY.

SECTION 6. LEGAL WORKER REQUIREMENTS

CITY is prohibited by A.R.S. § 41-4401 from awarding a contract to any CONTRACTOR who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214. Therefore, CONTRACTOR agrees that:

- A. CONTRACTOR and each subcontractor it uses warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214.
- B. A breach of a warranty under paragraph A constitutes a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.
- C. The CITY retains the legal right to inspect the papers of any CONTRACTOR or subcontractor employee who works on the Agreement to ensure that CONTRACTOR or subcontractor is complying with the warranty under paragraph A.

SECTION 7. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS

CONTRACTOR's products, service, and facilities must be in full compliance with all applicable federal, state and local health, environmental, and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by CITY.

At the request of CITY representatives, CONTRACTOR shall provide CITY:

- 1) Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by CONTRACTOR under this Agreement.
- 2) A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against CONTRACTOR's firm or its subcontractors including work performed, dates, reasons, dispositions, and resolutions.

CITY shall have the right, but not the obligation, to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by CONTRACTOR or subcontractor. CITY

may also inspect operations conducted by CONTRACTOR or subcontractor in the performance of this Agreement.

SECTION 8. GENERAL CONDITIONS

The following general conditions are material to CITY's entry into this Agreement, and CONTRACTOR's breach of any one or more of them constitute a material breach of contract:

A. **Records**

CITY, FTA, the Comptroller General of the United States, or any designee may inspect and copy, as the case may be, any facilities, books, documents, papers, computerized media and records of CONTRACTOR that are pertinent to this Agreement for any purpose, including an audit, related to the Agreement. CONTRACTOR shall maintain all books, records, data, and documents according to generally accepted accounting principles as required by the uniform system of accounts and records. All required records must be maintained for a minimum of five (5) years after CITY makes the final payment and all other pending matters are closed.

Parties providing documents to the CITY or to CITY employees are hereby advised that notwithstanding anything to the contrary in such party's form of nondisclosure agreement, the CITY intends to comply with all laws relating to preservation and disclosure of public records, and will consider itself to have satisfied the requirements of any nondisclosure agreement by following the procedures described in the RFP, Section 1.19, Offeror Rights.

B. **Covenant Against Contingent Fees**

Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of Congress, no member of the Phoenix City Council, and no officer, agent, or employee of CITY has any interest, financially or otherwise, in this Agreement.

C. **Alteration in Character of Work**

Whenever an alteration in the character of work results in a substantial change in the nature of services, thereby materially increasing or decreasing the cost of the performance, the work will be performed in accordance with this Agreement. Before any additional work is started, a contract change order or supplemental agreement shall be executed by CITY and CONTRACTOR. CITY and CONTRACTOR agree to negotiate and resolve contract change orders in good faith.

No changes in the scope, character, or complexity of work shall be made by CONTRACTOR without first receiving approval properly defining and limiting the change. CITY will not pay any claim for extra work done or materials furnished by CONTRACTOR except as provided in this Agreement, and CONTRACTOR may not do any work or furnish any materials not covered by this Agreement unless first approved in writing by CITY. Any such work or materials furnished by CONTRACTOR without prior written approval is CONTRACTOR's sole risk, cost and expense, and CONTRACTOR may not make any claim for compensation for any such work or materials.

D. **Amendments**

Whenever an addition, deletion or alteration to the services described in **Contract Exhibit A** substantially changes the Scope of Work, thereby materially increasing or decreasing

the cost of performance, a Contract Change Order or Supplemental Agreement must first be approved in writing by the CITY and CONTRACTOR before such addition, deletion or alteration shall be performed. Changes to the services may be made and the compensation to be paid to CONTRACTOR may be adjusted by mutual agreement in writing signed by CITY and CONTRACTOR, but in no event may the compensation exceed the amount set forth in Section 2(A) without further written authorization from CITY. It is specifically understood and agreed that no claim for extra work done or materials furnished by CONTRACTOR will be allowed except as provided herein, nor shall CONTRACTOR do any work or furnish any materials not covered by this Agreement unless first authorized in writing by the CITY. Any work or materials furnished by CONTRACTOR without prior written authorization shall be at CONTRACTOR's risk, cost and expense, and CONTRACTOR agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

E. Non-Assignability

CONTRACTOR shall have no power to assign its right and obligations under this Agreement without the prior written consent of CITY. Any attempt to assign without such prior written consent shall be void.

F. Fiscal Year Clause.

The continuation of this Agreement after the end of each fiscal year of CITY is subject to the City of Phoenix appropriating funds for the Agreement in subsequent fiscal years. CITY does not represent that funding will be approximated because such a budgetary determination is solely within the City Council's discretion at the time the subsequent budget is adopted. CITY's fiscal years end on June 30 each year.

G. Fiscal Year Time for Payment.

Under the provisions of A.R.S. § 42-17108, CITY may pay for services rendered or costs incurred only during a fiscal year in which the services and costs are budgeted and for a period of sixty (60) days thereafter. CONTRACTOR must submit its invoices for services performed or costs incurred, together with any required reports, before the close of a fiscal year allowing sufficient time for the processing of payment within the 60-day period.

H. Ownership of Documents and Products

All software, documents and products created or developed by CONTRACTOR while performing under this Agreement shall belong to CITY. This provision is intended to be of broad application and to include but not be limited to, software programs, drawings, artwork, publicity materials, reports, estimates, route information, schedules and related materials, hardware and other products whether or not transit related.

I. Contract Administration and Dispute Resolution

1. Disputes related to this Agreement's interpretation or performance, if not resolved by the parties, must be decided in writing by Contracts Specialist Lead or his/her designee. The decision of the Contracts Specialist Lead is final and conclusive unless within ten (10) calendar days from the date of receipt of the decision, CONTRACTOR appeals in writing to the CITY's Public Transit Director. On appeal, CONTRACTOR will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Public Transit Director or designee is binding on CONTRACTOR, and CONTRACTOR shall abide by the decision.

2. Performance During Dispute: CONTRACTOR shall continue performance under this Agreement during all disputes unless CONTRACTOR's performance is refused by CITY or is enjoined or prohibited by court of competent jurisdiction.
3. Claims for Damages: If either party to the contract suffers injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, the injured party shall make a claim for damages in writing to the other party within five (5) calendar days after the first observance of the injury of damage.
4. Remedies: Unless the Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to this Agreement or its breach must be decided by arbitration.
5. Rights and Remedies: The parties' rights and remedies and their duties and obligations under this Agreement do not limit or exclude any rights, remedies, duties or obligations otherwise recognized or imposed by law. No action or failure to act by CITY or CONTRACTOR constitutes a waiver of any right or duty afforded either of them under the Agreement, and any such action or failure to act does not constitute approval of or acquiescence in any breach of the Agreement, except as may later be specifically agreed in writing.

J. Key Personnel

Should CONTRACTOR's current key personnel performing under this Agreement and listed in CONTRACTOR's Offer become unavailable, their replacement shall be subject to CITY's prior approval. Approval shall be in CITY's sole and unfettered discretion. "Key Personnel" as that term is used in this paragraph includes CONTRACTOR's assistant general managers.

K. Notices

Any notice, consent or other communication ("Notice") required or permitted under this Agreement must be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If to CONTRACTOR:

If to CITY: Jesús Sapien, Public Transit Director
City of Phoenix Public Transit Department
302 North 1st Avenue, Suite 900
Phoenix, AZ 85003
Telephone: (602) 262-7242
FAX (602) 495-2002

Notices will be deemed received at the time they are personally served or on the delivery date shown on proof of delivery by any commercial air courier or express service. Any time period stated in a Notice must be computed from the time the Notice is deemed

received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this paragraph.

Notices sent by facsimile transmission must also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice does not change the effective date of a notice sent by facsimile transmission.

L. Attorneys' Fees

If suit is brought by either party to enforce the terms of this Agreement, to collect any monies due, or to collect money damages for breach, the prevailing party is entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

M. Federal, State and Local Laws

CONTRACTOR warrants that it shall comply with all federal, state and local laws and ordinances and all lawful orders, rules and regulations applicable to this Agreement.

N. Cancellation Rights

All parties acknowledge that this Contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

O. Waiver

CITY's failure at any time to require performance of any provision of this Agreement in no way affects the right of CITY to enforce the provision later or to enforce any other provision of this Agreement.

P. Compliance with the Immigration Reform and Control Act of 1986 (IRCA) Required

CONTRACTOR understands and acknowledges the applicability to it of IRCA and Arizona Revised Statutes § 23-211 through § 23-214 in performing this Agreement and shall permit CITY inspection of its personnel records to verify compliance.

Q. Non-Waiver of Right

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any default or right to which the party is entitled, nor does it in any way affect the right of the party to enforce such provisions thereafter.

R. Implied Contract Terms

Each and every provision of law and any clause required by law to be in this Agreement must be read and enforced as though it were included in the Agreement, and if any such provision is not inserted or is not correctly inserted, then upon either party's request the Agreement must be promptly amended to insert the correct provision.

S. Severability

This Agreement's provisions are severable, and if any provision is deemed invalid by a forum of competent jurisdiction, all other provisions of the Agreement remain in effect without the invalid provision.

T. Organization Disclaimer

This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or partnership between the parties or any other formal business organization, and the parties have only the rights and obligations set forth in may be considered a CITY employee, and no CITY civil service, retirement or personnel rights or privileges accrue to such persons. CONTRACTOR assumes all liability for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all related taxes and premiums for such persons. CONTRACTOR shall defend and indemnify CITY against all of these liabilities.

U. Unsatisfactory Performance

The CITY shall decide all questions as to the quality and acceptability of any work performed under the Contract as monitored and documented by the CITY. If, in the opinion of the CITY, performance becomes unsatisfactory, the CITY shall notify the CONTRACTOR. The CONTRACTOR will have thirty (30) days to cure the unsatisfactory performance.

If the unsatisfactory performance is not cured within the time specified, the CITY may immediately correct or complete the work to its satisfaction and deduct the associated costs from any balances due or to become due to the CONTRACTOR. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

SECTION 9. TERMINATION OF SERVICES

A. Termination for Convenience

This Contract may be terminated at any time by mutual written consent, or by the CITY, with or without cause, upon giving 30 days' written notice to Contractor. The CITY at its convenience, by written notice, may terminate this contract, in whole or in part. CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the date of termination. CONTRACTOR shall promptly submit these costs to CITY for payment together with such supporting documentation as CITY may require. If CONTRACTOR has any property in its possession belonging to CITY, CONTRACTOR shall account for and return or dispose of the property as CITY directs.

When Notice of Termination is received, CONTRACTOR shall immediately consult with CITY about the goods and materials on order then or that are in place and about CONTRACTOR's plan to proceed with the work had the Agreement not been terminated. After this consultation, CONTRACTOR shall take whatever action CITY may direct related to the Agreement, including cancelling orders; retaining, selling or otherwise disposing of goods and materials; and winding up work or continuing to prosecute it.

B. Termination for Cause.

Subject to CONTRACTOR's right to cure under the provisions of Section 9(D), Opportunity to Cure, if CONTRACTOR: (a) fails to provide any of the deliverables specified in this Agreement within the time specified or any extension; or (b) fails to perform any other material provision of this Agreement, CITY may terminate the Agreement for cause. Failure to perform includes any attempt by CONTRACTOR to use unacceptable personnel or supply materials, defective products or workmanship or to furnish the required service and/or product later than the time set forth in the Agreement.

If, after termination for cause, it is determined that CONTRACTOR was not in default or that a delay was excusable, then the termination shall be deemed a termination for convenience, and CITY may, in its sole discretion, require CONTRACTOR to continue performance of this Agreement and, if appropriate under the circumstances, allow additional time for performance to be completed, and pay CONTRACTOR its costs of delay, demobilization and remobilization, if appropriate.

C. Notice of Termination

CITY shall give CONTRACTOR thirty (30) days written notice before terminating CONTRACTOR for convenience or for cause. To effect either termination, CITY shall deliver a Notice of Termination to CONTRACTOR specifying: (a) the nature of the default, if any; (b) the nature of the termination, i.e., whether for convenience or cause; (c) the date upon which the termination takes effect.

D. Opportunity to Cure

Before termination for cause, the Procurement Officer, after consultation with CONTRACTOR, will deliver to CONTRACTOR a notice to cure and allow CONTRACTOR thirty (30) calendar days (or such other period agreed to between CONTRACTOR and CITY) within which CONTRACTOR correct and cure the defect. Upon receiving the cure notice, CONTRACTOR shall diligently pursue the cure to completion. The notice will state the time period within which cure is permitted together with other reasonable conditions. If CONTRACTOR fails to correct and cure the breach or default of any of the terms, covenants, or conditions of this Agreement within thirty (30) calendar days (or such other period agreed to between CONTRACTOR and CITY) after CONTRACTOR's receipt of the notice to cure specifying the nature of the default or breach, then CITY may terminate this Agreement by delivering a notice of termination for cause in accordance with Section 9(B), Termination for Cause.

Any termination for cause will not preclude CITY from also pursuing all other available remedies against CONTRACTOR and its sureties for the default or breach.

SECTION 10. CONFIDENTIALITY AND DATA SECURITY

A. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to CONTRACTOR or its subcontractors in connection with this Agreement is confidential, proprietary information owned by the CITY. Except as specifically provided in this Agreement, the CONTRACTOR and its subcontractors will 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. Personal identifying information, financial account information, or restricted CITY information, whether electronic format or hard copy, must be secured and protected at all times, in accordance with federal, state and local law and, if applicable, in compliance with Payment Card Industry Data Security Standards, to avoid unauthorized access. At a minimum, CONTRACTOR must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

B. When personal identifying information, financial account information, or restricted CITY information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.

- C. In the event that data collected or obtained by the CONTRACTOR in connection with this Agreement is believed to have been compromised, CONTRACTOR will notify the Department's Deputy Chief Information Officer immediately. CONTRACTOR agrees to reimburse the CITY for any costs incurred by the CITY to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- D. CONTRACTOR agrees that the requirements of this section will be incorporated into all subcontractor agreements entered into by the CONTRACTOR. It is further agreed that a violation of this section will be deemed to cause irreparable harm and justifies injunctive relief in court. A violation of this section may result in immediate termination of this agreement without notice.
- E. The obligations of CONTRACTOR under this section will survive the termination of this Agreement.

SECTION 11. NON-DISCLOSURE

In addition to the confidentiality and data security requirements in Section 10, Confidentiality and Data Security, CONTRACTOR shall not disclose, without the CITY's prior written consent, any information in the performance of the Services under this Agreement to any person, firm, corporation, association, or other entity other than persons in the CITY's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall CONTRACTOR make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation or other entity, except the CITY.

CONTRACTOR agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by CONTRACTOR's relationship with the CITY. CONTRACTOR further represents to the CITY that, as an inducement to enter this Agreement, CONTRACTOR will hold this information in trust and confidence for the CITY's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the CITY.

Should the CITY, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, CONTRACTOR shall 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 shall be returned to CONTRACTOR pending the resolution of the existing or anticipated litigation.

CONTRACTOR agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by CONTRACTOR. It is further agreed that a violation of this Section shall 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. The obligations of CONTRACTOR under this Section shall survive the termination of this Agreement.

SECTION 12. EQUAL EMPLOYMENT OPPORTUNITY

In order to do business with the CITY, CONTRACTOR must comply with Phoenix City Code,

1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. CONTRACTOR will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

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

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

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.

SECTION 13. INTEGRATION

This Agreement constitutes the full and complete understanding and agreement of the parties and supersedes all prior understandings, agreements, discussion, proposals, bids, negotiations, communications, and correspondence, whether oral or written. Neither party has made any representation, promise, inducement or statement of intention that is not embodied in this Agreement and neither party is bound by or liable for any matter not in the Agreement.

SECTION 14. GOVERNING LAW; FORUM; VENUE

This Agreement is executed and delivered in the state of Arizona, and the substantive laws of Arizona (without reference to choice-of-law principles) govern the Agreement's interpretation and enforcement. Any action to interpret or enforce this Agreement must be commenced and maintained in the state or federal courts of the state of Arizona, Maricopa County.

SECTION 15. FORCE MAJEURE

Except for payment of sums due, neither party will be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the

control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

SECTION 16. REPORTING REQUIREMENTS

CONTRACTOR shall provide or assist the CITY in the preparation of documents or reports as required by federal, state, county or agencies and/or CITY. This may include the preparation of grant applications and related quarterly reports, short and long-range transit plans, annual FTA reports, operating and statistical analysis statements. Such reports shall be completed in accordance with CITY and federal requirements. Reports and required submissions may be revised, reorganized, deleted or changes as directed by the CITY.

SECTION 17. CONFLICTS OF INTEREST

- A. CONTRACTOR acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the CITY has any financial interest in the contracting firm. For breach of violation of this warranty, CITY shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.
- B. If CITY finds that CONTRACTOR or anyone acting on its behalf offered or gave gratuities in the form of entertainment, gifts or inducements to any CITY officer or employee 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, CITY may, on one (1) calendar day written notice to CONTRACTOR, terminate CONTRACTOR's right to perform this Agreement; provided that the issue may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the CITY is entitled to the same remedies against CONTRACTOR as could be pursued for CONTRACTOR's default or breach.
- C. This Agreement is subject to cancellation by CITY pursuant to the provisions of Arizona Revised Statutes § 38-511.

SECTION 18. CLAIMS OR DEMANDS AGAINST THE CITY

CONTRACTOR shall comply with 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. CONTRACTOR shall follow the prescribed procedure for presentation of claims and demands. In addition, CONTRACTOR shall comply with the claim statutes, A.R.S. §§ 12-821 and 12-821.01, pertaining to claims against CITY.

Nothing in this Agreement constitutes a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S § 12-821.01(C) to affect the date on which a claim accrues under A.R.S. § 12-821.01(A) and (B).

SECTION 19. DOCUMENT CONFIDENTIALITY

If CONTRACTOR believes that any document(s) it provides to CITY is or are confidential, the CONTRACTOR shall mark the section “CONFIDENTIAL” and segregate it in a specific manner. CONTRACTOR may request that specific information within provided documents be treated by the CITY as confidential provided the CONTRACTOR clearly labels the information “confidential.” CONTRACTOR shall state the basis for considering the marked section confidential, including the specific harm or prejudice that may result from disclosure.

If a public records request for such information is received, the CITY will promptly notify the CONTRACTOR that a request or requirement to produce the documents has been received. Notice will be given as soon as practicable, and may include facsimile transmission, electronic mail and/or regular mail. Immediately upon notification, the CONTRACTOR shall identify the documents that it desires to remain confidential. The CONTRACTOR may then take such measures as it deems necessary, at the CONTRACTOR’s sole cost and expense, to protect the documents against disclosure. If the CONTRACTOR fails to obtain and provide to the CITY a court order prohibiting disclosure of the requested documents within seven (7) days after receiving notice of the request for disclosure, the CITY will deem the CONTRACTOR to have consented to the disclosure, and the requested documents or information may be disclosed by the CITY.

SECTION 20. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION

CONTRACTOR shall 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 or the services provided under it, or (2) any Agreement-related documents or their contents without the prior written consent of CITY, except as required by law. The name of any site on which services are performed shall not be used in any advertising or other promotional context by CONTRACTOR without CITY’s prior written consent.

SECTION 21. PROFESSIONAL COMPETENCY.

- A. Qualifications. CONTRACTOR represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. CONTRACTOR further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such services.
- B. Level of Care and Skill. Services provided by CONTRACTOR will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of CONTRACTOR’s profession currently practicing in the same industry under similar conditions. CONTRACTOR or approval by the CITY of CONTRACTOR’s work shall in no way relieve CONTRACTOR of liability to the CITY for damages suffered or incurred arising from the failure of CONTRACTOR to adhere to the aforesaid standard of professional compliance.

SECTION 22. TRANSITION COOPERATION AGREEMENT

Upon the expiration, termination or other conclusion of this Agreement and of CONTRACTOR’s rights and obligations under the Agreement, the parties anticipate that CITY will select a

successor provider to perform the same or similar work. The parties further acknowledge that the successor provider may be CONTRACTOR or another individual, firm or entity.

If the successor provider is an individual, firm or entity other than CONTRACTOR, then CONTRACTOR shall cooperate fully with the successor provider to effect a smooth and seamless transition. This cooperation must include, but is not limited to, the following:

- 1) CONTRACTOR shall share and permit the copying of all books and records necessary or convenient for the successor provider to undertake its work. These records include, but are not limited to, maintenance records, inventory records, supplier contracts, and support Agreements.
- 2) If original records are necessary for the successor provider to properly perform its legal obligations, CONTRACTOR shall provide the originals to the successor, and CONTRACTOR shall keep copies of them.
- 3) CONTRACTOR shall execute documents necessary to effect a transfer of all contracts, goods, and services.
- 4) CONTRACTOR shall not sell, transfer, convey or encumber any CITY assets or any of the assets to be transferred to the successor provider.
- 5) CONTRACTOR shall maintain all inventory levels necessary for the successor provider to continue to perform the work.
- 6) As CITY may direct, CONTRACTOR shall surrender to the successor provider or to CITY all CITY-owned real, personal and/or intellectual property.
- 7) CONTRACTOR shall inventory all property (real, personal or mixed) purchased or leased with CITY funds and all property in which CITY has an ownership or possessory interest. CONTRACTOR shall include a description of the property and its location in sufficient detail to permit easy identification.

Until the date that the successor provider assumes its position, CONTRACTOR shall fully and conscientiously perform its obligations under this Agreement in a professional and workmanlike manner.

If CITY elects to perform the same or similar work using CITY forces, CONTRACTOR's duty of cooperation, as described above, shall extend to CITY as the successor provider.

SECTION 23. EFFECTIVE DATE

This Agreement will be in full force and effect only when it has been approved by the City Council of the City of Phoenix, Arizona, executed by the duly authorized officials of the respective parties, and filed with the Phoenix City Clerk.

SECTION 24. EXHIBITS; INCORPORATION BY REFERENCE

The RFP, addenda and CONTRACTOR's Offer are incorporated into this Agreement by reference. The following attached Exhibits are each by this reference also incorporated into this Agreement.

Contract Exhibit A – Scope of Work
Contract Exhibit B – Fee Schedule
Contract Exhibit C – Insurance Requirements

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed in triplicate originals.

CITY OF PHOENIX, ARIZONA
ED ZUERCHER, CITY MANAGER

By _____
Jesús Sapien
Public Transit Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

APPROVED BY CITY COUNCIL ORDINANCE NO. _____ on _____

ATTEST:

By _____

**CONTRACT EXHIBIT A
SCOPE OF WORK**

(Scope of Work to be completed based upon the offer accepted and awarded by the City)

**CONTRACT EXHIBIT B
FEE SCHEDULE**

(Fee Schedule to be completed based upon the offer accepted and awarded by the City)

**CONTRACT EXHIBIT C
INSURANCE REQUIREMENTS**

**(Insurance Requirements to be completed based upon the offer accepted and awarded
by the City)**