

**ATTACHMENT 8 – PROFESSIONAL SERVICES DRAFT CONTRACT**



**CITY OF PHOENIX, ARIZONA  
HUMAN SERVICES DEPARTMENT**

**CONTRACT NO.  
HEAD START BIRTH TO FIVE PROGRAM  
PROFESSIONAL SERVICES CONTRACT**

## TABLE OF CONTENTS

1.	CONTRACT INTERPRETATION	4
2.	TERM OF AGREEMENT	5
3.	COST AND PAYMENT	5
4.	SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS	8
5.	INDEMNIFICATION AND INSURANCE REQUIREMENTS	8
6.	INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER	9
7.	CITY'S CONTRACTUAL RIGHTS	9
8.	CONTRACT ADMINISTRATION AND OPERATION	10
9.	CONTACTS WITH THIRD PARTIES	15
10.	CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND DISADVANTAGED BUSINESS ENTERPRISES	15
11.	AUDIT RECORDS	16
12.	CONTRACT CHANGES	16
13.	STATE AND LOCAL TRANSACTION PRIVILEGE TAXES	17
14.	TAX INDEMNIFICATION	17
15.	TAX RESPONSIBILITY QUALIFICATION	17
16.	DEBARMENT	18
17.	RISK OR LOSS AND LIABILITY	18
18.	NO ORAL ALTERATIONS	19
19.	NOTICES	19
20.	INTEGRATION	20
21.	GOVERNING LAW; FORUM; VENUE	20
22.	FISCAL YEAR CLAUSE	20
23.	TERMINATION OR SUSPENSION OF SERVICES	21
24.	TEMPORARY SUSPENSION	21
25.	PROFESSIONAL COMPETENCY	22
26.	SPECIFIC PERFORMANCE	22
27.	DOCUMENTATION	22
28.	CONFLICT OF INTEREST	23
29.	PUBLIC RECORDS	23
30.	CLAIMS OR DEMANDS AGAINST THE CITY	24
31.	WAIVER OF CLAIMS FOR ANTICIPATED PROFITS	24
32.	THIRD PARTY BENEFICIARY CLAUSE	24

## **EXHIBITS**

<b>EXHIBIT A – SCOPE OF WORK</b>	<b>25</b>
<b>EXHIBIT B – PRICE SCHEDULE</b>	<b>33</b>
<b>EXHIBIT C – INDEMNIFICATION AND INSURANCE REQUIREMENTS</b>	<b>34</b>
<b>EXHIBIT D – CONTRACTOR’S INSURANCE CERTIFICATE</b>	<b>38</b>
<b>EXHIBIT E – SPECIAL TERMS AND CONDITIONS</b>	<b>39</b>

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF PHOENIX  
INSERT LEGAL NAME OF CONTRACTOR HERE**

**This AGREEMENT** is made and entered into this Enter date of Enter month, 2019, (“the Effective Date”), by and between the City of Phoenix, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as “City”) and insert legal name of Contractor here, insert state of corporation and correct business name – Corporation, LLC, etc. that you have confirmed on the Arizona Corporation Commission website, (hereinafter referred to as “Contractor”).

**RECITALS**

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

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

**1. CONTRACT INTERPRETATION:**

- 1.1. APPLICABLE LAW:** This Contract will be governed by the laws of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- 1.2. CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
  - 1.2.1.** Special Terms and Conditions
  - 1.2.2.** Standard Terms and Conditions
  - 1.2.3.** Amendments
  - 1.2.4.** Statement or Scope of Work
  - 1.2.5.** Specifications
  - 1.2.6.** Attachments
  - 1.2.7.** Exhibits
  - 1.2.8.** Instructions to Contractors
  - 1.2.9.** Other documents referenced or included in the RFP

**1.3. SEVERABILITY:** The provisions of this Contract are severable to the extent any provision or application held to be invalid will not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

**1.4. PAROLE EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of this Contract. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

**2. TERM OF CONTRACT:**

**2.1.** This Contract begins on the Effective Date in the introductory paragraph, and upon approval by the City, for a two-year initial contract term. The Contract may be extended with one three-year option for a total aggregate contract term of 5 years.

**2.2.** This Contract will terminate upon the earliest occurrence of any of the following:

**2.2.1.** reaching the end of the term exercised as set forth in 1.1;

**2.2.2.** completing the services set forth in the Scope of Work attached as **EXHIBIT A – SCOPE OF WORK** (the “Services”);

**2.2.3.** payment of the maximum compensation under Paragraph 3 of this Agreement; or

**2.2.4.** termination pursuant to the provisions of this Contract.

**3. COST AND PAYMENTS:**

**3.1. PAYMENT:** The total amount to be remitted by the City to Contractor for all Services satisfactorily performed under this Contract will not exceed \$\_\_\_\_\_. Under this Contract, the City will pay for Services as specified in **EXHIBIT B – PRICE SCHEDULE** attached hereto. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account.

**3.2. INVOICING:** Contractor will submit monthly invoices on or before the Enter calendar day of every month. Each invoice will be accompanied with itemized receipts. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation will be provided supporting the charges reflected in the monthly invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to the Contractor. Contractor will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours

worked, hourly rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.

Invoices will be submitted to: Daniela Canisales, Administrative Assistant II.

- 3.3. PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor if there is an outstanding obligation due the City. Contractor agrees that any obligation it owes the City will be offset against any payment due to Contractor from the City.
- 3.4. LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- 3.5. DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 3.6. NO ADVANCED PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.
- 3.7. PAYMENT RECOUPMENT:** Contractor must reimburse the City upon demand or the City may deduct from future payments due to the following:
  - 3.7.1.** Any amounts received by Contractor from the City for Services which have been inaccurately reported or are found to be unsubstantiated.
  - 3.7.2.** Any amounts paid by Contractor to a subcontractor not authorized in writing by the City.
  - 3.7.3.** Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the information disclosed in a Substantial Interest Disclosure statement.
  - 3.7.4.** Any amount paid by the City for Services that duplicate Services covered by other specific grants and Contracts.
  - 3.7.5.** Any amounts expended for items or purposes determined unallowable by the City.
  - 3.7.6.** Any amounts paid by the City for which Contractor's books, records, and other documents are not sufficient to clearly substantiate that those amounts were used by Contractor to perform Services.
  - 3.7.7.** Any amount identified as a financial audit exception.

- 3.7.8. Any amounts paid or reimbursed in excess of this Contract or service reimbursement ceiling.
- 3.7.9. Any amounts paid to Contractor which are subsequently determined to be defective pursuant to the Certification of Cost or Pricing Data section of these terms and conditions.
- 3.7.10. Any payments made for Services rendered before the Contract begin date or after the Contract termination date.

**3.8. AVAILABILITY OF FUNDS:** Funding may not be available for performance under this Contract beyond the current fiscal year of the City. No legal liability on the part of the City for any payment may arise under this Contract beyond the current fiscal year. The City may reduce payments or terminate this Contract without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City shall have the sole and unfettered discretion in determining the availability of funds.

**3.9. MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any Contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price Contractor charges others for similar quantities under similar conditions. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. Contractor will promptly notify the City of such price reductions.

**3.10. NON-WAIVER OF LIABILITY:** The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

**3.11. SUBSTANTIAL INTEREST DISCLOSURE:** Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in Contractor's organization or with which Contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless Contractor has made a full written disclosure of the proposed payments, including amounts, to the City.

Leases, rental agreements, or purchase of real property covered by Paragraph A of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate. For the purpose of this Section, "relative" shall have the same meaning as in City's Administrative Regulation 2.91 (2) Definition.

**3.12. LIMITATIONS ON FEDERAL INTEREST:** Contractor shall not mortgage, use as collateral for a credit line or for other loan obligations, or, sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed or renovated with Head Start funds, without the City's written permission.

Contractor must have the City's written permission before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which Contractor's application was approved.

**3.13. RIGHT OF OFFSET:** Contractor acknowledges the provisions of the Phoenix City Code which require and demand that no payment be made to any Contractor while there is an outstanding obligation due the City. The City may direct any such obligation be offset against payment due Contractor. The City shall also be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning Contractor's non-conforming performance or failure to perform this Contract, including expenses, costs and damages described in these Standard Terms and Conditions.

**3.14. COST OR PRICING DATA CERTIFICATION:** By signing this Contract, any amendment thereto, or other official form, Contractor certifies, to the best of Contractor's knowledge and belief, any cost or pricing data submitted is accurate, complete, and current as of the date submitted or other mutually agreed upon date. Furthermore, if the City finds that the price was increased because the cost or pricing data furnished by Contractor was inaccurate, incomplete or not current as of the date of certification, the City will readjust the price to exclude any significant amount. Such adjustment by the City may include overhead. When the Contract rates are set by law or regulation, the certifying of cost or pricing data does not apply.

**3.15. FINAL PAYMENT:** The City will make final payment for all Services performed and accepted within 60 days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Contract. Any use by the City of preliminary reports, raw data or other incomplete material returned by Contractor will be at the City's sole risk for such use.

**4. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS:**

Contractor will provide services that will be in accordance with the Scope of Work as set forth in **EXHIBIT A – SCOPE OF WORK**, which may be supplemented with additional detail from time to time during the term of the Contract, and that are satisfactory to the City. In performing these services, Contractor will also specifically comply with the applicable Special Terms and Conditions that are set forth in **EXHIBIT E – SPECIAL TERMS AND CONDITIONS**. Contractor will provide progress reports to the City according to a mutually agreed-upon schedule.

**5. INDEMNIFICATION AND INSURANCE REQUIREMENTS: SEE EXHIBIT C.**



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

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

**7. CITY'S CONTRACTUAL RIGHTS:**

- 7.1.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.
- 7.2. NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 7.3. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the Contract is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole Contract and constitutes a total breach of the Contract as a whole.
- 7.4. ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 7.5. DEFAULT:** In case of default by Contractor, the City may, by written notice, cancel this Contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the Offer and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

**7.6. COVENANT AGAINST CONTINGENT FEES:** Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the Contract without liability or in its discretion to deduct from the Contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

**7.7. COST JUSTIFICATION:** In the event only one response is received, the City may require that Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.

**7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this Contract belongs to the City and must be delivered to the City at City's request upon termination of this Contract. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.

**8. CONTRACT ADMINISTRATION AND OPERATION:**

**8.1. RECORDS:** All Books, accounts, reports, files and other records relating to the Contract will be subject at all reasonable times to inspection and audit by the City for five years after the completion of the Contract. Such records will be produced at a City of Phoenix office as designated by the City.

**8.2. CONFIDENTIALITY AND DATA SECURITY:**

**8.2.1.** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract is confidential, proprietary information owned by the City subject to the Federal Educational Rights and Privacy Act ("FERPA") and/or the Individuals with Disabilities Education Act ("IDEA"), as applicable. Except as specifically provided in this Contract, Contractor will not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager, or his/her designee.

**8.2.2.** Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times 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. 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.

- 8.2.3.** In the event that data collected or obtained by Contractor in connection with this Contract is suspected to have been compromised, Contractor shall notify the contracting City department immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, Contractor will inform any and all individuals affected by any such breach at the specific direction of the City.
- 8.2.4.** Contractor agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by Contractor that process, store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, Contractor agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, Contractor must remediate found vulnerabilities in computerized systems they provide; Contractor is **not** liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by Contractor.
- 8.2.5.** Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.
- 8.2.6.** Contractor agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE) No. 16, or through earning industry certification, such as ISO/IEC 27001.

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

**8.2.8.** The obligations of Contractor under this Section will survive the termination of this Contract.

**8.3. DISCRIMINATION PROHIBITED:**

Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V, as amended.

**8.4. EQUAL EMPLOYMENT OPPORTUNITY AND PAY:**

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

**For a Contractor with 35 employees or fewer:** Contractor in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice.

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

**For a Contractor with more than 35 employees:** Contractor in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. 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 Contract 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.

**8.5. LEGAL WORKER REQUIREMENTS:**

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

- 8.5.1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.
- 8.5.2. A breach of warranty herein will be deemed a material breach of the Contract and is subject to penalties up to and including termination of the Contract.
- 8.5.3. The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Contract to ensure that Contractor or subcontractor is complying with the warranty herein.

**8.6. LICENSES AND PERMITS:**

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

**8.7. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION:**

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

**8.8. EXCLUSIVE POSSESSION:**

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

**8.9. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:**

Contractor's products, services and facilities will 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 the City. At the request of City representatives, Contractor will provide the City:

**8.9.1.** Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this Contract.

**8.9.2.** A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, containers, transportation vehicles or vessels, and disposal facilities provided by Contractor or subcontractor. The City will also have the right to inspect operations conducted by Contractor or subcontractor in the performance of this Contract. The City further reserves the right to make unannounced inspections of Contractor's facilities (during normal business hours).

**8.10. COMPLIANCE WITH LAWS:**

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because Contractor will be acting as an independent contractor, the City assumes no responsibility for Contractor's acts.

**8.11. 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.

## **8.12. CONTINUATION DURING DISPUTES:**

**8.12.1.** Contractor agrees as a condition of this Contract, 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 Contract, 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.

**8.12.2.** Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Contract will not be deemed a waiver.

## **8.13. STRICT PERFORMANCE:**

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

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

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

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

## **10. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND DISADVANTAGED BUSINESS ENTERPRISES:**

Pursuant to national and City policy to award a fair share of contracts to small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises, Contractor shall take affirmative steps to assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services. Such affirmative steps shall include the following:

- 10.1. Include qualified small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises on solicitation lists.
- 10.2. Assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are solicited whenever they are potential sources.
- 10.3. When economically feasible, divide total requirements into small tasks or quantities so as to permit maximum participation from small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- 10.4. Where the requirement permits, establish delivery schedules which encourage participation by small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- 10.5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce and the Community Services Administration as required.
- 10.6. Comply with the applicable requirements of the Small and Disadvantaged Business Enterprise Policy Plan for the City of Phoenix.
- 10.7. Include affirmative steps, one through six in any subcontract.

## 11. AUDIT RECORDS:

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

## 12. CONTRACT CHANGES:

- 12.1. **AMENDMENTS:** Whenever an addition, deletion or alteration to the Services described in **EXHIBIT A – SCOPE OF WORK** substantially changes the Scope of Work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the City and Contractor before such addition, deletion or alteration will be performed. Changes to the Services may be made and the compensation to be paid to Contractor may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by Contractor will be allowed except as provided herein, nor will Contractor do any



work or furnish any materials not covered by this Contract unless first authorized in writing. Any work or materials furnished by Contractor without prior written authorization will be at Contractor's risk, cost and expense, and Contractor agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

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

**13. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:**

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by Contractor to collect applicable taxes from the City shall not relieve Contractor from its obligation to remit taxes. It is the responsibility of the prospective Offeror to determine any applicable taxes. The City will look at the price or Offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your bid. You may also find information at [Phoenix Tax Division](#) or [State of AZ Department of Revenue](#). Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a bid price.

**14. TAX INDEMNIFICATION:**

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

**15. TAX RESPONSIBILITY QUALIFICATION:**

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege

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

**16. DEBARMENT:**

If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer stating the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

**17. RISK OF LOSS AND LIABILITY:**

**17.1. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

**17.2. ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to Contractor. If so returned, all costs are the responsibility of Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

**17.3. 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.

**17.4. LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

**17.5. CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Contract. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify Contractor.

Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the Contract. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

**17.6. DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

**18. NO ORAL ALTERATIONS:**

No alteration or variation of the terms of this Contract will be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Contract. No oral understanding or agreement not incorporated in this Contract will be binding on any of the parties herein.

**19. NOTICES:**

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

If to Contractor:



If to City:

Pamela M. Smith, Procurement Officer  
City of Phoenix Human Services Department  
Management Services Division  
200 W. Washington Street, 18<sup>th</sup> Floor  
Phoenix, AZ 85003-1611  
[pam.smith@phoenix.gov](mailto:pam.smith@phoenix.gov)

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

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

**20. INTEGRATION:**

This Contract 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 Contract, and no party will be bound by or liable for any statement of intention not so set forth.

**21. GOVERNING LAW; FORUM; VENUE**

This Contract is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to the choice of law principles) will govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Contract that cannot be administratively resolved, or otherwise related to or arising from this Contract, 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.

**22. FISCAL YEAR CLAUSE**

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

billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

**23. TERMINATION OR SUSPENSION OF SERVICES:**

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

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

**23.1.2.** Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.

**23.1.3.** Appraise the work it has completed and submit its appraisal to the City for evaluation.

**23.1.4.** Be paid in full the pro rata value for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.

**23.2. GRATUITIES:** The City may, by written notice to Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of the City making any determinations with respect to the performing of such Contract. In the event this Contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of the gratuity.

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

**24. TEMPORARY SUSPENSION:**

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

**25. PROFESSIONAL COMPETENCY:**

**25.1. QUALIFICATIONS:** Contractor represents that it is familiar with the nature and extent of this Contract, the Services, and any conditions that may affect its performance under this Contract. 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.

**25.2. LEVEL OF CARE AND SKILL:** Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Contractor's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

**26. SPECIFIC PERFORMANCE:**

Contractor agrees that in the event of a breach by Contractor of any material provision of this Contract, the City will, upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this Contract. In the event the City will elect to treat any such breach on the part of Contractor as a discharge of the Contract, 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.

**27. DOCUMENTATION:**

**27.1. 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 Contract, then, and in that event, upon written demand, Contractor will relinquish to the possession and control of the City its entire file related to this Contract and only those portions of said file deemed by the City to be not privileged will be returned to Contractor pending the resolution of the existing or anticipated litigation.

**27.2. FORMAT AND QUALITY:** All documents prepared by Contractor will be prepared in a format and at a quality approved by the City.

**27.3. DOCUMENT REVIEW:** Contractor will review all documents provided by the City related to the performance of the Services and will promptly notify the City of any defects or deficiencies discovered in such review.

**27.4. SUBMITTALS:** Contractor will provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as such become available to the City for review.

**28. CONFLICT OF INTEREST:**

- 28.1.** Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Contract 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 Contract without liability, including any such commission, percentage, brokerage or contingent fee.
- 28.2.** The City reserves the right to immediately terminate this Contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.
- 28.3.** Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Contract, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Contract, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.
- 28.4.** This Contract is subject to the requirements of Arizona Revised Statutes §38-511.

**29. PUBLIC RECORDS:**

- 29.1.** Notwithstanding any provisions of this Contract regarding confidentiality, secrets, or protected rights, Contractor acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, Contractor understands that disclosure of some or all of the items subject to this Contract may be required by law.
- 29.2.** In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, the City agrees to provide Contractor with notice of that request, which shall be deemed given when deposited by the City with the USPS for regular delivery to the address of Contractor specified in their proposal. Within ten days of City notice by the City, Contractor will inform the City in writing of any objection by Contractor to the disclosure of the requested information. Failure by the Contractor to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.
- 29.3.** In the event Contractor objects to disclosure within the time specified, Contractor agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which Contractor does not object thereto. Furthermore, Contractor agrees to indemnify

and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Contract.

**30. CLAIMS OR DEMANDS AGAINST THE CITY:**

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

**30.2.** Moreover, nothing in this Contract 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).

**31. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:**

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

**32. THIRD PARTY BENEFICIARY CLAUSE:**

The parties expressly agree that this Contract 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 Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.



## EXHIBIT A – SCOPE OF WORK

### 1. **BACKGROUND:**

Pursuant to Chapter 2, Section 2, Paragraph (1) of the Phoenix City Charter, the City of Phoenix Human Services Department, Education Division, Head Start Birth to Five Program (City) requires a Social and Emotional Learning (SEL) program and professional development package to meet programmatic needs. Strong social-emotional development in the early years provides a critical foundation for lifelong development and learning. Head Start Performance Standard 1302.45 requires a program-wide culture that promotes children’s mental health, social and emotional well-being, and overall health. In addition, the City of Phoenix Head Start Birth to Five Program must implement policies to limit suspension and prohibit expulsion as described in Head Start Program Performance Standard §1302.17.

Each year, the Head Start Birth to Five Program allocates funds to address programmatic needs through professional development, training, and technical assistance funds. The City requires a SEL program and professional development package that supports, promotes and develops the skills and learning necessary to address the social-emotional needs of children ages birth to five. The SEL program and professional development package will provide deep understanding of the skill development to staff, children and families that participate in programs funded through the City of Phoenix Human Services Department.

Teaching staff have identified an increasing number of behavior concerns in the classroom and to an escalating degree. Although behavior support staff are responsive, the need for a comprehensive, program-wide approach to ensure classroom safety is imperative. In alignment with the professional field, and in accordance with the Head Start Birth to Five Strategic Plan, the desired response must be trauma-informed and integrate the principles of nurturing and responsive relationships, self-regulation and problem-solving. The program and professional development package must include the concept of teaching to understand the intent of external behaviors prior to the teaching of new skills.

The SEL program and professional development package must be effective and evidence-based to improve social-emotional learning in children ages birth to five; improve staff skills in supporting and addressing the social-emotional development of children with a wide range of needs and experiences; improve school climate and decrease classroom behavior referrals. The SEL program and professional development package should address prevalent mental health concerns, behavior theory, challenging behaviors, trauma informed practices, conflict resolution and brain development.

In addition to the SEL program and professional development package, the Contractor must provide the necessary professional development for all teaching and support staff to implement a structured approach to teaching effective social-emotional skills and creating a positive school climate. Head Start Performance Standard 1302.92 set forth the professional development standard “*A program must establish and implement a*

*systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their job responsibilities must include: research-based approaches to professional development for education staff focused on effective curricula implementation, knowledge of the content in nurturing adult-child interactions and addressing challenging behaviors”.*

## **2. CONTRACTOR REQUIREMENTS:**

The SEL Program and Professional Development Package shall:

- (a) Work in collaboration with the City to build a system to support the development of self-sufficiency and self-regulation in children. Address the integration of behavior, social-emotional development, executive function and academics to ensure the achievement of school readiness goals. Provide a schedule of sufficient and consistent frequency to ensure a systematic roll out of the SEL program and professional development package.
- (b) Utilize adult learning research to develop essential skills. At a minimum provide instructional staff with the skills to:
  - Understand the connection between brain development and behavior including attention and neuroplasticity;
  - Utilize brain development foundation;
  - Develop and understand composure;
  - Assess and determine an appropriate response to a child’s internal state;
  - Identify behavioral triggers and behavioral temperaments;
  - Notice and respond to behavioral cues in children;
  - Develop a language of safety and responsiveness;
  - Demonstrate appropriate levels of assertiveness and support the development of assertiveness in children;
  - Provide child appropriate choices in behavioral responses;
  - Develop empathy in children;
  - Provide effective encouragement;
  - Recognize and judge the use of natural and logical consequences;
  - Evaluate behavioral situations and create appropriately matching adult response methods;
  - Develop problem solving skills in children;
  - Develop and practice appropriate response to physical aggression;
  - Implement classroom rituals;
  - Effectively respond to tantrums and rage;
  - Address the bully and victim cycle;
  - Respond to developing early childhood school safety.
- (c) Be evidence-based. Any response must provide evidence of developmentally appropriate research-based early childhood curricula, including additional enhancements, as appropriate that are based on scientifically valid research and

have standardized training procedures and curriculum materials to support implementation.

- (d) Be aligned with the *Head Start Early Learning Outcomes Framework/Curriculum: Ages Birth to Five* and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development and learning outlined in the SEL Program and Professional Development Package.
- (e) Have an organized developmental scope and sequence that include plans and materials for learning experiences. Support a general wellness for staff, children and families.
- (f) Work with leadership to develop (1) a monitoring system for implementation with fidelity, and (2) a process for continuous improvement of its implementation through the system of training and professional development.
- (g) Establish and implement a systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive social-emotional services within the scope of their job responsibilities. Must include a menu of delivery options. Offer a component of online training and support.
- (h) Provide staff a minimum of 15 clock hours of whole group professional development per year. For teaching staff, such professional development must meet the requirements described in section 648A(a)(5) of the Head Start Act.
- (i) Provide a tool to assess all education staff to identify strengths, areas of needed support, and which staff would benefit most from intensive coaching.
- (j) Provide research-based approaches to professional development for education staff, that are focused on effective implementation, knowledge of the content, partnering with families, supporting all children with disabilities and their families, providing effective and nurturing adult-child interactions, supporting dual language learners as appropriate, addressing challenging behaviors, preparing children and families for transitions and use of data to individualize learning experiences to improve outcomes for all children.
- (k) Provide opportunities for intensive coaching to those education staff identified through the analysis of multiple data sources and recommended by the City, including opportunities to be observed and receive feedback and modeling of effective teacher practices. This will require travel to multiple sites based on the need for coaching.
- (l) Provide opportunities for education staff not identified for intensive coaching to receive other forms of research-based professional development. Ensure all staff and coaches have adequate training and experience in adult learning and in

using assessment data to drive coaching strategies aligned with program performance goals.

- (m) Provide ongoing communication between the coach, program director, education director, and any other relevant staff.
- (n) Work with leadership to develop or adapt professional development to meet the training needs of education staff.
- (o) Have easy to navigate and understand links from their website for evaluation team.
- (p) Offer classroom material that will help promote constructive problem solving and academic success.
- (q) Support a program-wide culture that promotes children's mental health, social-emotional well-being, and overall health.
- (r) Help teachers, including family child care providers, to improve classroom management and teacher practices through strategies that include using classroom observations and consultations to address teacher and individual child needs and creating physical and cultural environments that promote positive mental health and social and emotional functioning.
- (s) Provide supports and professional development for effective classroom management.
- (t) Address the necessary elements to creating positive learning environments.
- (u) Directly address teaching practices by developing strategies for supporting children with challenging behaviors and other social, emotional, and mental health concerns.
- (v) Work with Leadership to identify a sustainable protocol for including mental health consultation services.
- (w) Address the need for follow up to ensure strategies are being implemented including fidelity tools.
- (x) Address prevalent child mental health concerns, including internalizing and externalizing.
- (y) Provide a plan for other staff, including home visitors, to meet children's mental health and social and emotional needs through strategies that include observation and consultation.

### 3. TRAINING DELIVERY FORMATS:

Computer Based Training (CBT) – type of training in which the individual learns by executing special training programs on a computer. City may have required specifications for CBT formats.

E-Learning (E) – the transfer of skills and knowledge through the use of technology that enables an individual to learn anytime and anywhere. E-learning applications and processes include Web-based learning, webinars, virtual education opportunities and digital collaboration. Content is delivered via internet, intranet/extranet, audio, video, satellite TV or other specified technology.

Onsite Classroom – City Facility (CF) – In person instruction session at a City facility or chosen facility.

Train-the-Trainer (TT) – transfer of knowledge and skills needed by a prospective trainer to provide a specified type of learning curriculum and experience.

### 4. CURRICULUM DELIVERABLES:

All Training shall at a minimum include the following:

#### Pre-Training and Post-Training

- (a) Clearly stated measurable learning objectives;
- (b) Assessments that test participant's achievement of stated learning objectives;
- (c) Verification of participant's attendance through a completed Sign-in Sheet;
- (d) Certificate of Completion and/or Completion Record of Training for each participant;
- (e) Participants' Evaluations of training, to include evaluation of Instructor;
- (f) Contractor shall provide training Evaluations to the applicable City contact no later than five business days after the training has been provided.

Facilitator Guide – Facilitator Guide shall include at a minimum:

- (a) Participant Guide;
- (b) Table of Contents;
- (c) Time segment allocations;
- (d) Stated measurable objectives that meet Head Start Performance Standards;
- (e) Bibliography for course content and referenced further reading.

#### Participant Guide

- (a) Table of Contents;
- (b) Time segment allocations;
- (c) Stated measurable and realistic objectives for the curriculum;
- (d) Bibliography for course content and referenced further reading.

### Assessment

- (a) Contractor shall conduct assessments for training services that will accurately test participants' comprehension of the learning objectives and, as appropriate, the skills obtained as of result of attending the Training;
- (b) Contractor shall submit a copy of completed Assessments to the applicable City contact no later than five business days after the training has been provided.

### Evaluation

- (a) Contractor shall have participants complete an Evaluation of the Training provided;
- (b) Contractor shall provide a copy or a composite of all Evaluations for a given Training session to the designated City contact.

### Professional Development Planning

Contractor shall provide one (1) planning session to the City, at no charge. The purpose of this session is to discuss training requirements.

Agreed upon requirements for the training shall be in writing and signed by authorized representatives from both parties (Contractor and the City).

Written Training Plan shall include at a minimum:

- (a) Statement of Work or Project Plan or Agenda or Description of Course;
- (b) Description or listing of Training Deliverables;
- (c) Applicable Training Pre-Requisites;
- (d) Location and/or format of Training delivery;
- (e) Who will be facilitating the Training delivery;
- (c) Cost.

The City shall have the final decision regarding:

- (a) Duration of training;
- (b) Delivery format;
- (c) Delivery location and facilities;
- (d) Training environment (room set-up, equipment or other facility requirements).

The City shall be allowed to review an actual Training activity via the proposed Training Delivery Format(s) prior to the commencement of any Services.

The City shall be allowed to edit and/or approve details of required Services, associated documentation and other materials.

Contractor shall submit a finalized outline and masters of all Materials necessary to perform the proposed services at a mutually agreed upon time prior to the start of Services to the City. The City may review and provide final approval to include: the type, extent, and duration of Services provided by Contractor.

#### Training Facility and Location

- (a) Training shall take place at a City chosen location. The City will organize locations and any on-site coaching.

#### Software/Hardware Requirements

Both parties (Contractor and City) are to review any software, hardware and/or system requirements, to include Security requirements, needed to deliver training particularly E-Learning delivered services, to ensure compatibility, access, and availability PRIOR to use by participants.

Contractor may be required to attend one or more meetings for the purpose of obtaining updates from the City.

#### **5. CITY OF PHOENIX RESPONSIBILITIES:**

The City shall:

- (a) Assign a point of contact for facilitation of professional development package;
- (b) Secure meeting space;
- (c) Inform staff regarding training and dates;
- (d) Secure time with appropriate staff to ensure proper and adequate communication with leadership in regards to the development of policies and identified on-going programmatic needs.
- (e) Provide a list of site-based classrooms and instructional teams as necessary for coaching and access to professional development.

#### **6. METHOD OF INVOICING:**

After services have taken place, the invoice needs to be submitted by the 15<sup>th</sup> calendar day of the following month. For example, if services were provided in August, the invoice must be submitted by September 15.

Each invoice will be accompanied with supporting documentation and will be submitted free of mathematical errors. All appropriate documentation will be provided that supports the charges reflected in the invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to Contractor. Contractor will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.

Invoice must include the following:

- Company Name and Complete Address
- Contact Person Name and Telephone Number
- Invoice Number and Date
- Date(s) of Services
- City Contract Number
- Itemized Service(s), description, unit of measure, unit price and extended price
- Shipping and Payment Terms
- Price shall include all administrative and overhead costs (including subcontractors)
- The dollar amount on the invoice, excluding shipping and taxes, shall not exceed the total dollar amount on the purchase order

Invoices shall be submitted via mail or email to: Daniela Canisales, Admin. Assistant II  
Email: [daniela.canisales@phoenix.gov](mailto:daniela.canisales@phoenix.gov)

**7. METHOD OF PAYMENT**

The City shall make payment to Contractor within forty-five (45) days of the invoice date.



## EXHIBIT B – PRICE SCHEDULE

## **EXHIBIT C INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **1. INDEMNIFICATION CLAUSE:**

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 Agreement. 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 Indemnitee from and against any and all Claims, except those arising solely from Indemnitee'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 Agreement, Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from the work performed by the Contractor for the City. The obligations of Contractor under this provision survive the termination or expiration of this Contract.

If Contractor is a governmental entity, the following Indemnification Clause will be utilized in place of the above clause:

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

### **2. INSURANCE REQUIREMENTS:**

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

These insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits stated in this section are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under this Contract by Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

If Contractor is a governmental entity, the Insurance Requirements Clause will be removed.

**2.1. MINIMUM SCOPE AND LIMITS OF INSURANCE:**

Contractor 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 requirements provided that the coverage is written on a “following form” basis.

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

Policy must include bodily injury, property damage and 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 be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor.”

**2.1.2. 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 Contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such Contractor or subcontractor executes the appropriate sole proprietor waiver form.

**2.1.3. Professional Liability (Errors and Omissions Liability)**

The policy must cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

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

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and

that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**3. ADDITIONAL INSURANCE REQUIREMENTS:**

The policies must include, or be endorsed to include, the following provisions:

**3.1.** On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by this Contract.

**3.2.** Contractor's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

**4. NOTICE OF CANCELLATION:**

For each insurance policy required by the insurance provisions of this Contract, Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be emailed to [hsdprocurement@phoenix.gov](mailto:hsdprocurement@phoenix.gov).

**5. 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 above-required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.

**6. VERIFICATION OF COVERAGE:**

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

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

All certificates required by this Contract must be sent directly to [hsdprocurement@phoenix.gov](mailto:hsdprocurement@phoenix.gov). The City contract number and service description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

**7. SUBCONTRACTORS:**

Contractors' certificate(s) must include all subcontractors as additional insureds under its policies **or** Contractor must furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors must be subject to the minimum requirements identified above.

**8. APPROVAL:**

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal contract amendment, but may be made by administrative action.

**EXHIBIT D  
CONTRACTOR'S INSURANCE CERTIFICATE**

**EXHIBIT E**  
**SPECIAL TERMS AND CONDITIONS**

**1. FUNDING:**

The City of Phoenix utilizes the United States Department of Health and Human Services (DHHS) funding to support the Head Start Birth to Five Program. Contractor shall be solely responsible for understanding and complying with all applicable regulations and requirements throughout this Agreement period. DHHS regulations can be found at: <https://www.acf.hhs.gov/ohs/about/head-start>.

**2. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING:**

**2.1. CONTRACT WORKER BACKGROUND SCREENING:**

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare.

**2.1.1.** The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

**2.2 BACKGROUND SCREENING RISK LEVEL:**

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

**2.3 STANDARD RISK LEVEL:** A standard risk background screening will be performed when the Contract Worker's work assignment will:

**2.3.1.** require a badge or key for access to City facilities; or

**2.3.2.** allow any access to sensitive, confidential records, personal identifying information or restricted City information; or

**2.3.3** allow unescorted access to City facilities during normal and non-business hours.

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

## **2.5 CONTRACTOR CERTIFICATION; CITY APPROVAL OF BACKGROUND SCREENING:**

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

## **2.6. TERMS OF THIS SECTION APPLICABLE TO ALL CONTRACTOR CONTRACTS AND SUBCONTRACTS:**

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

## **2.7. MATERIALITY OF BACKGROUND SCREENING REQUIREMENTS; INDEMNITY:**

The background screening requirements are material to City's entry into this Contract and any breach of these provisions will be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in this Contract, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Contract. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Contract or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Contract.



## **2.8. CONTINUING DUTY; AUDIT:**

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

## **3. NON-ASSIGNABILITY:**

This Contract is in the nature of a personal services agreement and Contractor shall have no power to assign its rights and obligations under this Contract without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.

## **4. MANDATORY DISCLOSURES:**

Contractor must disclose, in a timely manner, in writing to City all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Head Start award. If Contractor receives Federal funds in excess of \$10,000,000 for any period during the performance of this Contract it is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM). (See Appendix XII to 45 CFR Part 75). Failure to make required disclosures can result in any of the remedies described in 45 CFR § 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

## **5. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689):**

In accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension," Contractor agrees that neither it, nor its principals is presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Contract by any federal department, and agrees to comply with the requirements of 2 CFR Part 180 and 2 CFR Part 376.

## **6. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:**

Applicable to all contracts in excess of \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the City, the Department of Health and Human Services, and the San Francisco Regional Office of the Environmental Protection Agency (EPA).

## **7. LOBBYING:**

Contractor agrees to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This certification is a requirement for contracting. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal

funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

**8. POLITICAL ACTIVITY:**

Contractor shall comply with the requirements of the Hatch Act which restricts political activity of individuals employed by recipient or sub-recipients whose principal employment is in connection with an activity that is financed in whole or in part by grants made by the Federal agency.

**9. COMPETITIVE BIDDING:**

If the purchase of supplies and equipment has been authorized in this Agreement, the Contractor shall procure all such items at the lowest practicable cost and shall purchase all non-expendable items costing \$1,000 or more and having a useful life of more than one year, through a generally accepted and reasonable competitive bidding process. Any procurement in violation of this provision shall be considered a financial audit exception. The Contractor shall expend City funds in a manner that would serve the public interest and honor the public trust.

**10. ACCOUNTING:**

Contractor's accounting practices shall be in conformance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) for state and local governmental entities or by the Financial Accounting Standards Board (FASB) for non-governmental entities. Contractor shall maintain separate accounts for City funds awarded under this Contract.

**11. ALLOWABLE COSTS:**

Contractor shall comply with the following Cost Principles as applicable to determine the allowability of incurred costs for the purpose of reimbursing costs under the Contract terms and conditions. Contractor certifies that funds received under this Contract will be expended to achieve the purposes of this Contract and to meet costs defined as allowable by the federal funding agency or the following federal guidelines:

OMB Circular A-21 for educational institutions

OMB Circular A-87 for State, local and Indian Tribal Governments OMB Circular A-122 for Non-Profit organizations

48 CFR Chapter 1-31.2 for Commercial Organizations

**12. SUBSTANTIAL INTEREST DISCLOSURE:**

**12.2.** Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in Contractor's organization or with which Contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless Contractor has made a full written disclosure of the proposed payments, including amounts, to the City.

**12.3.** Lease agreements, rental agreements, or purchase of real property covered by Paragraph A of this section shall be in writing and accompanied by an

independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.

**12.4.** For the purpose of this Section, "relative" shall have the same meaning as in City's Administrative Regulation 2.91 (2) Definition.

**13. COST OR PRICING DATA CERTIFICATION:**

By signing this Contract, any amendment thereto, or other official form, Contractor certifies, to the best of Contractor's knowledge and belief, any cost or pricing data submitted is accurate, complete, and current as of the date submitted or other mutually agreed upon date. Furthermore, if the City finds that the price was increased because the cost or pricing data furnished by Contractor was inaccurate, incomplete or not current as of the date of certification, the City will readjust the price to exclude any significant amount. Such adjustment by the City may include overhead, profit or fees. When the Contract rates are set by law or regulation, the certifying of cost or pricing data does not apply.