



**CITY OF PHOENIX
FINANCE DEPARTMENT**

**REQUEST FOR QUALIFICATIONS (RFQu)
RFQu 20-045**

**SURVEY SERVICES: MARKETING, INFORMATION GATHERING AND
ANALYZING DATA – REQUIREMENTS CONTRACT**

**DEADLINE FOR RECEIVING
STATEMENT OF QUALIFICATIONS (SOQ)**

Procurement Division
251 W. Washington Street, 8th Floor, Phoenix, AZ 85003
Offer Due Date: March 6, 2020 – 2:00 pm

PROCUREMENT OFFICER

Margie Vasquez
251 W. Washington Street - 8th Floor
Phoenix, AZ 85003
(602) 495-0699
Margie.Vasquez@phoenix.gov

Date posted on website (issue Date): January 30, 2020



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SECTION I - INSTRUCTIONS

Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist vendors, but vendors are expected to read and comply with the entire solicitation.

SOLICITATION RESPONSE CHECK LIST

Check off each of the following as the necessary action is completed.

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- The mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.

Mail the response timely – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.



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1. DESCRIPTION

1.1 The City of Phoenix invites qualified offerors to submit a sealed Request for Qualification(s) for survey services: marketing, information gathering and analyzing data. The City may conduct both external community surveys and an internal police department survey. Services will be provided on an as-needed basis for a five-year period commencing on or about April 1, 2020, in accordance with the specifications and provisions contained herein the “Effective Date” conditioned upon award by City Council.

1.2 Through this RFQu, the City will establish a Qualified Vendors List (QVL) to assist the City with conducting both internal government surveys and external community surveys which may include marketing, community outreach, information gathering, and analysis with Offerors who can demonstrate experience in providing these types of services.

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

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

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION

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

3. SCHEDULE OF EVENTS

ACTIVITY (All times are local Phoenix time)	DATE
RFQu Issue Date	January 30, 2020
Written Inquiries Due Date	February 14, 2020
Offer Due Date	MARCH 6, 2020 – 2:00 pm
Offer Submittal Location	251 W. Washington Street Procurement Division – 8 th Floor Phoenix, Arizona 85003



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4. PREPARATION OF OFFER

- 4.1. All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 4.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.
- 4.3. All time periods stated as a number of days will be calendar days.
- 4.4. It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
 - 4.4.1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 4.4.2. Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.
 - 4.4.3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
 - 4.4.4. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
 - 4.4.5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
 - 4.4.6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of



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alternate products offered.

- 4.4.7. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Procurement Division, 251 W. Washington Street, 8th Floor, Phoenix, AZ 85003. It is the Offeror's responsibility to check the website throughout the entire solicitation period up to city council award, read the entire solicitation, and verify all required information is submitted with its offer.

6. EXCEPTIONS

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation, which includes the services agreement. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer as explained in Inquiries.

7. INQUIRIES

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff or City Council from date of distribution of this solicitation until after City Council awards the contract – please see the solicitation transparency policy, paragraph #18. All questions concerning, or issues related to, this solicitation must be presented **in writing**.

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

8. ADDENDA

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



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9. BUSINESS IN ARIZONA

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

10. LICENSES

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

11. CERTIFICATION

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

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

12. SUBMISSION OF OFFER

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

Offers must be submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number
- Solicitation Title
- Offer Opening Date

All offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.

13. WITHDRAWAL OF OFFER

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative.



14. OFFER RESULTS

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

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Offerors.

15. PRE-AWARD QUALIFICATIONS

These minimum qualifications must be included, otherwise the Offeror may be deemed non-responsive:

- 15.1.** Offerors must demonstrate at least one year experience developing, conducting and analyzing community **or** internal police department surveys.
- 15.2.** Offerors must demonstrate experience administering survey(s) in at least one language other than English -- list languages and examples of community outreach efforts.
- 15.3.** Offerors must present staffing resources (provide a short resume for each of the key project staff who will be assigned to the resulting contract).
- 15.4.** Offerors must submit a minimum of three references from prior clients where a survey was completed. Provide information in Section VI, Item 7, References Section.
- 15.5.** Offerors must submit at least one project example(s) of surveys conducted similar to this scope of work or showcasing types of surveys done that the City seeks.

16. CONTENT OF RESPONSE

The Offerors' response will include the following:

- 16.1.** Offerors shall provide information to demonstrate at least one year experience developing, conducting and analyzing community surveys, **or** internal police department surveys. To be on the list for each survey type, you must show at least one year for each.



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16.1.1. Provide the firm's overview and indicate the number of years in business.

16.1.2. Indicate if your firm has been providing services for a minimum of one year, and indicate for which type of service.

16.2. Offerors should indicate if they are applying for community surveys or police department survey services. Offerors may apply for both types of surveys, but must show the requisite experience for each since they will be evaluated separately.

16.3. Offerors submitting for community surveys shall provide information to demonstrate experience administering survey(s) in at least one language, other than English.

16.3.1. Provide a list of languages and examples of community outreach efforts.

16.3.2. Offerors must present staffing resources. Provide an organization chart of key staff and the roles and responsibilities for each staff member. Provide a short resume which includes years of experience, qualifications providing services as listed in the RFQu for the staff which will be assigned to the awarded contract. Experience shall reflect experience conducting and analyzing community surveys or internal police surveys.

16.4. Offerors must submit a minimum of three references from prior clients where a survey was completed.

16.5. Offerors must submit one to three project examples of surveys conducted similar to this scope of work, or showcasing types of surveys done that the city seeks.

16.6. Provide a brief assessment of the present workload capacity.

17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST

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



18. SOLICITATION TRANSPARENCY POLICY

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



19. PROTEST PROCESS

- 19.1.** Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 19.2.** Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 19.3.** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4.** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.
- 19.5.** All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

 - 19.5.1. Identification of the solicitation number;
 - 19.5.2. The name, address and telephone number of the protester;
 - 19.5.3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
 - 19.5.4. The form of relief requested; and
 - 19.5.5. The signature of the protester or its authorized representative.
 - 19.5.6. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City’s Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

20. PUBLIC RECORD

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may



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request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

21. LATE OFFERS

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

22. RIGHT TO DISQUALIFY

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

23. CONTRACT AWARD

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award. Placement on a list is not a guarantee of work.

24. DETERMINING RESPONSIVENESS AND RESPONSIBILITY

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



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- 24.2.** Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.
- 24.3.** Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.
- 24.4.** Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, financial ability, and facilities for conducting the work to be performed.
- 24.5.** The Procurement Officer will review each Offer to determine if the Offeror is responsible and responsive. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.
- 24.6.** The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

25. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE

- 25.1.** The City will notify Offeror(s) whose Offer is evaluated as in the Competitive Range or made to a 'short list' for specific projects, and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any



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facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

- 25.2** Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).
- 25.3** If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.
- 25.4** To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.



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REFER TO THE PROFESSIONAL SERVICES AGREEMENT

EXHIBIT E1 – STANDARD TERMS AND CONDITIONS

All parties must agree to the terms and conditions in the Professional Services agreement.



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REFER TO THE PROFESSIONAL SERVICES AGREEMENT

EXHIBIT E2 – SPECIAL TERMS AND CONDITIONS

All parties must agree to the terms and conditions in the Professional Services agreement.



SECTION IV – INSURANCE AND INDEMNIFICATION

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 Contract. This indemnity includes any Claims 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 Contract, Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from the work performed by Contractor for the City. The obligations of Contractor under this provision survive the termination or expiration of this Contract.

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 subconsultants. 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 the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

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 the Contractor.”

2.1.2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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The policy must be endorsed to include the 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 the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor.”

2.1.3. Worker’s Compensation and Employers’ Liability

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

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a 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.



2.1.4. 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 the Contractor even if those limits of liability are in excess of those required by this Contract.

3.2. The 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, the 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 mailed, emailed, hand delivered or sent by facsimile transmission to **City of Phoenix, Finance Department – Purchasing Division, Attn: Margie Vasquez, 251 W. Washington Street, Phoenix AZ 85003.**

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 the 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 or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to **City of Phoenix, Finance Department – Purchasing Division, Attn: Margie Vasquez, 251 W. Washington Street, Phoenix AZ 85003.** The City project/contract number and project 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.



SECTION V – SCOPE

1. STATEMENT OF NEED

The City of Phoenix invites qualified offerors to submit a sealed Request for Qualification(s) for survey services: marketing, information gathering and analyzing data. The City may conduct both external community surveys and an internal police department survey.

Through this RFQu, the City will establish a Qualified Vendors List (QVL) of companies with demonstrated experience in providing these types of services. The City anticipates hiring at least one firm to lead the survey projects and facilitate compiling the list of survey questions. More than one agency may be needed to reach the desired markets, or for the internal versus external surveys. Not all vendors who are placed on the list may be offered the opportunity to contract with the City.

2. BACKGROUND INFORMATION

The City of Phoenix recognizes that the relationship between the community and organizations tasked with providing public safety is invaluable. While both are part of the community at large it is important to recognize that there are significant distinctions between those that police and those that are policed. It has become clear that there is a perceived erosion in understanding and trust between the community and the Police Department. To address this issue, the Phoenix City Council has authorized to solicit qualified vendors to provide an external and internal police and community opinion survey and citizen outreach program.

Prior to this request, a community and Police Department survey was first identified in the Phoenix Police Department’s Five Point Action Plan. The action plan had been created with the help of the National Police Foundation in response to a high level of officer involved shootings. The Police Department had initially planned to seek out and survey the community for feedback focused on: perceptions of safety, community interactions, performance rating, suggestions for trust building and improvement, and work with an ad hoc committee to allow for community involvement.

After resident feedback and City Council direction, the scope of a proposed survey was expanded to include additional detailed data collection and outreach. An internal police department employee survey will also be conducted to collect officer views of community receptivity, feelings of safety and risk, as well as officer views of internal support and accountability. The City seeks to find qualified vendors that can provide the vast services and technical skills required to provide such a varied and complex survey and outreach project.



3. CONTRACT AWARD

Through this RFQu, the City will establish a Qualified Vendors List (QVL) to provide Community Survey and Outreach Services and an internal police department survey with Offerors who have demonstrated experience in providing these types of services.

Contract award does not guarantee any number of assignments or any other measure of work. Offerors will be required to accept the City's terms and conditions contained in the attached *Exhibit A*, Professional Services Agreement, unless there is a clear conflict with the scope of work.

4. SCOPE OF SERVICES

4.1. Community External Survey and Outreach

- The City will need comprehensive quantitative and qualitative survey services:

4.1.1. Quantitative Survey Services

- Collect extensive data via traditional/nontraditional survey tactics that employ the highest and best statistical methods.
- This data must not only be representational of communities within geographical boundaries (zip codes, council districts), but also captures communities which may not be bound to geographical areas such as: homeless, LGBTQ, immigrants, and mental health.
- Additional data points of interest should include race, gender, income, political affiliation, and any other known important demographic indicators.

4.1.2. Qualitative Survey Services

- Plan, host, recruit and facilitate townhall or focus group style community input gathering sessions.
- These sessions must provide the public with a safe space to voice both concerns, appreciations, challenges and solutions regarding public safety and police within the City of Phoenix.

4.1.3. Data Collection

- The vendor must collect data from a large enough group to be considered statically significant in the above-mentioned communities and areas.
- The vendor must be able to provide multiple sources of data collection.
- Not only will the City require typical large-scale telephone/web-based surveys, but also strategies to increase participation among the harder to count populations--this may include confidential interviews and call in lines managed by a third party, door to door evaluations, geofencing and social media.



4.1.4. Transparency

The City seeks to promote transparency and build trust with residents and thus requires qualified vendors to be beyond reproach. For this project the vendor shall be required to maintain a public website in which the survey/outreach strategy is posted and clearly stated. The vendor will also work under the oversight of City Council and with the Ad Hoc committee and will provide updates and presentations. Most importantly the survey and outreach must be independent and not be politicized.

4.1.5. Inclusion

To provide the greatest level of community participation and inclusion the vendor must be committed to working with and taking input from an ad hoc committee. The vendor must also provide public forums to answer questions, take input and allow for public participation.

4.1.6. Results

Just as the final product must combine the qualitative and quantitative research, so too shall it contain best practices within the field of policing and criminal justice, as well as providing potential actionable items.

4.2. Internal Police Department Survey

The Police Department is also seeking to conduct an internal survey focused on personnel perspectives and sentiments. This data will help in understand differing opinions as well as the factors that lead to overall satisfaction and safety within the workplace.

The City will need comprehensive quantitative and qualitative survey services:

4.2.1. Quantitative Survey Services

The survey should also collect extensive quantitative data to help identify factors which may impact officers' perspectives. This should include but is not limited to geographic location (precinct/area of the city), bureau/patrol, length of service, age, rank, gender, race, ethnicity, education, and shift.

4.2.2. Qualitative Survey Services

This survey should focus on police perspectives, including but limited to: Job satisfaction, perceived support from City and the Department, perception of the community's respect for law enforcement, officer's perception of safety and wellness, and officer interest in promotion, transfer to specialty unit, or seeking outside employment.

4.2.3. Results

The final report must include analysis and recommendations, including best practices recommendations, and an actionable plan for areas of improvement.



SECTION VI - SUBMITTALS

CITY OF PHOENIX

SECTION VI – SUBMITTALS

1. COPIES

Please submit one (1) original, six (6) copies, and one (1) electronic copy (flash drive or CD) of the Submittal Section and all other required documentation.

Please submit only the Submittal Section, do not submit a copy of the entire solicitation document. This offer will remain in effect for a period of 180 calendar days from the opening date and is irrevocable unless it is in the City's best interest to release offer(s).

2. OFFER SUBMITTAL FORMAT:

The written offer must be signed by an individual authorized to bind Offeror and should provide the name, title, e-mail address and telephone number of individual with the authority to contractually bind the company and who may be contacted during the evaluation period. Offerors should be:

- Typewritten for ease of evaluation;
- Signed by an authorized representative of the Offeror;
- Submitted with contact information for the individual(s) authorized to negotiate with the City;
- Submitted with a table of contents and tabbed per the following major sections:

✓ **Tab 1 Pre-Award Qualification Criteria**

- Offer will provide an overview of the Firm's History, years in business, number of year(s) firm has been providing the services being bid on (must have at least one years' experience).
- Section I, Item 15 Pre-Award Qualifications: Provide the necessary documentation to demonstrate compliance with the requirements listed in this section.
- Section I, Item 16 Content of Response: Provide the necessary documentation to demonstrate compliance with the requirements listed in this Section.

✓ **Tab 2 Submittal Section**

✓ **Tab 3 Signed Addenda (if any)**

3. OFFER:

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.



4. COSTS AND PAYMENTS

4.1. PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City will **default to 0% - net 45 days**:

- Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

- Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**



5. BID PRICE SCHEDULE:

Contractor shall provide hourly rates for all job classifications which will be utilized to provide services under the contract. The hourly rates shall be inclusive of all costs related to the services requested in the solicitation.

Contractor shall submit the hourly rate structure by completing the table below and providing the following information for each job classification proposed:

- Job Classification Title
- Hourly Rate

Job Classification Title	Hourly Rate
	\$ _____ per hour
	\$ _____ per hour
	\$ _____ per hour
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	\$ _____ per hour
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**Additional copies of this page can be made as required.*



SECTION VI - SUBMITTALS

CITY OF PHOENIX

6. PLACE OF BUSINESS:

Bidder's place of business will be an award factor in order to minimize the City's transportation and handling costs. If additional service locations are available or if different from the address in Offer Section, enter below:

7. REFERENCES

Contractor certifies that they have provided complete Community Survey and Outreach Services listed in this solicitation for a period of one to three years.

Number of years your firm has been providing community surveys: _____

Contractor shall furnish the names, of a minimum of three (3) firms or persons, addresses, and telephone numbers from prior clients where a survey was completed.

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____



SECTION VI - SUBMITTALS

CITY OF PHOENIX

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

8. CERTIFICATION REGARDING DEPARTMENT SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The prospective participant (Contractor for a federally funded project) certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by **any** federal department or agency.

Where the prospective participant is unable to certify to any of the statements in this certification, such participant **shall** attach an explanation to this solicitation.

THE PARTICIPANT (Contractor for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

Authorized Official: _____

Title of Authorized Official: _____

Date: _____



SECTION VI - SUBMITTALS

CITY OF PHOENIX

OFFER

TO THE CITY OF PHOENIX - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of a solicitation.

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Arizona Corporation Commission File No. _____

Taxpayer's Federal Identification No.: If recommended for contract award, Bidder agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the Bidder provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

Enter City's Registration System ID Number
 Located at City's eProcurement website (see
 SECTION I – INSTRUCTIONS - CITY'S
 REGISTRATION)

Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

Authorized Signature

Date

Printed Name and Title
(LLC, Inc., Sole Proprietor)

(Member, Manager, President)

Address _____

City, State and Zip Code _____

Telephone Number _____

Company's Fax Number _____

Company's Toll Free # _____

Email Address _____



SECTION VI - SUBMITTALS

CITY OF PHOENIX

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX
A Municipal Corporation
Ed Zuercher, City Manager

Director or delegate, Department

_____ this ____ day of _____ 2020

City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



SECTION VI - SUBMITTALS

CITY OF PHOENIX

CONFLICT OF INTEREST & SOLICITATION TRANSPARENCY DISCLOSURE FORM

This form must be signed and submitted to the City and all questions must be answered or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

--	--	--	--

First	MI	Last	Suffix
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2. Contract Information

Solicitation No. & Name: RFQu 20-045 Survey Services, Marketing, Information Gathering and Analyzing Data – Requirements Contract

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

--

4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

--

5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:



SECTION VI - SUBMITTALS

CITY OF PHOENIX

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

7. Disclosure of conflict of interest:

City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

8. Notice Regarding Prohibited Interest in Contracts

ARS Sections 38-501 et. Seq & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).



SECTION VI - SUBMITTALS

CITY OF PHOENIX

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer's or employee's city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

9. Acknowledgements

Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
- This "no-contact" provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

10. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.



SECTION VI - SUBMITTALS

CITY OF PHOENIX

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.
Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA

EXHIBIT A

PROFESSIONAL SERVICES

BETWEEN

THE CITY OF PHOENIX

AND

CONSULTANT

City of Phoenix Agreement No.: RFQu 20-045

**Survey Services, Marketing, Information Gathering and Analyzing Data –
Requirements Contract**

**Department Contact
Name of Department
Department Address & Phone #**

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This **AGREEMENT** (the “Agreement”) is made and entered into **DATE**, (the “Effective Date”), or as of the City Clerk Date, whichever is later, by and between the City of Phoenix, a municipal corporation of the State of Arizona (hereinafter referred to as “**City**”) and Consultant (hereinafter referred to as “**Consultant**”).

RECITALS

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

WHEREAS, the City desires to obtain the technology products and professional services that are specifically set forth in this Agreement; and

WHEREAS, the City procured these technology products and professional services in accordance with Administrative Regulation 3.10; and

WHEREAS, Consultant possesses the skills and expertise necessary to provide such technology products and professional services as desired by the City; and

WHEREAS, this Agreement is authorized by action of the City Council dated **DATE**;

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

1. TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date and the term shall extend for **NUMBER** weeks/months/years thereafter, with **NUMBER** option[s] to extend the term for additional weeks/months/year [each], which option[s] may be exercised at the sole discretion of the City.

2. CONTRACT ADMINISTRATION AND OPERATION

2.1. Health, Environmental and Safety Requirements. The Consultant’s products, services and facilities shall 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. The City shall have the right to inspect operations conducted by the Consultant or subcontractor in the performance of this Agreement.

2.2. Compliance with Laws. Consultant agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Agreement regardless of whether or not they are referred to by the City. Consultant agrees to permit City inspection of Consultant’s business records, including personnel records, to verify any such compliance. Because the Consultant will be acting as an

independent contractor, the City assumes no responsibility for the Consultant's acts.

- 2.3. Strict Performance.** Either party's failure to insist on strict performance of any term or condition of the Contract will not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it; except where enforcement of this provision would be in conflict with the scope or proposal.

3. COSTS AND PAYMENT

- 3.1.** Under this Agreement, the City will pay for services at hourly bill rates, with no additional charges for overhead, benefits, local travel or administrative support. The total amount to be remitted by the City to Consultant for all Services satisfactorily performed under this Agreement shall not exceed **WRITE OUT THE AMOUNT Dollars USD (\$NUMBER AMOUNT USD)** per year including reasonable and necessary travel expenses (if such travel expenses are approved in advance by the City and included in the Fee Schedule (Exhibit D)). Payments shall be made in proportion to the Services performed and no more than ninety percent (90%) of the total contract price shall be paid before the work is totally completed and accepted by the City.
- 3.2.** City will pay any sales or use taxes resulting from this Agreement. Consultant shall be solely responsible for payment of taxes based on Consultant's income. Consultant agrees that on all billings, invoices, books and records relating to this Agreement, Consultant will state the charges imposed for the sale, transfer and licensing of tangible personal property separately from charges imposed for professional, personal and technological services including, but not limited to, software installation, modification, training, consulting and technical telephone support.
- 3.3. Invoices.** Consultant shall submit invoices in arrears, on every other week basis. Each invoice will clearly note any Purchase Order number and be accompanied with itemized receipts which include approved timesheets. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation supporting the charges reflected in the invoice will be provided with the invoice. Upon finding of an error and/or missing documentation, the City may return the invoice to the Consultant. Consultant 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. Oversight by the City in identifying an error does not result in waiver of any of the City's rights. All properly submitted invoices will be paid promptly after the City's receipt of the invoice.

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

4. REIMBURSABLE EXPENSES

Consultant shall demonstrate good judgment when incurring costs that are considered a Reimbursable Expense (as defined below) while conducting business for the City. All Reimbursable Expenses shall be reasonable and prudent. Business expenses (including office and travel expenses) satisfying Sections A, B, and C below, and also all of the following requirements, shall constitute "Reimbursable Expenses": (i) the expenses were necessarily incurred in order to perform the Services, (ii) the expenses were directly attributable to the Services, (iii) the expenses are not administrative or office expenses, and (iv) the expenses are not otherwise attributable to overhead or incurred in connection with services provided to any other client of Consultant.

- 4.1.** Receipts for Reimbursable Expenses must be submitted with all requests for payment. Reimbursable Expenses that require receipts include, but are not limited to, express mail; delivery services; messenger services; and outside printing.
- 4.2.** Requests for reimbursement of office expenses must be submitted with a description of the task, which includes how the expense was incurred.

Examples of office expenses needing documentation include, but are not limited to, telephone; internal printing /copies (not to exceed 0.15 cents per page for black & white copies); postage; facsimiles (long distance charges only); and supplies.

- 4.3.** Travel expenses must be approved in advance by the City and must be included in the Fee Schedule. Consultant shall comply with City of Phoenix Administrative Regulation 3.41 – Business, Conference and Training Travel and Other Business Expenses (Effective Date: January 16, 2015), as it may be amended, as to the eligible and ineligible expenses for reimbursement and required documentation as set forth in **Exhibit E**, attached hereto, and incorporated herein.

Invoice Instructions:

Email Invoices to: invoices@phoenix.gov

Consultant Remit to: COMPANY NAME
ATTN: Accounts Receivable
ADDRESS
CITY STATE ZIP CODE
TELEPHONE
EMAIL ADDRESS

5. SCOPE OF WORK AND SUPPLEMENTAL TERMS AND CONDITIONS

Consultant will provide Services in accordance with the Scope of Work (SOW) as set forth in **Exhibit C**, which may be supplemented from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these Services, Consultant shall also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in **Exhibit E, if any**. Consultant will provide progress reports and weekly time sheets to the Project Manager according to a mutually agreed-upon schedule.

6. INSURANCE AND INDEMNITY

Consultant and subcontractors shall throughout the term of this Agreement comply with the insurance and indemnity requirements of **Exhibit A, and other indemnity provisions in this Agreement**. Consultant and subcontractors shall also deliver to the City, prior to commencement of the Services provided under this Agreement, a certificate of insurance acceptable to the City in the amounts and form specified in this Agreement. Failure of Consultant and subconsultants to maintain insurance during the term of the Agreement, including renewal options, is a material breach of this Agreement and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the City.

7. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER

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

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

8. LEGAL WORKER REQUIREMENTS

City is prohibited by A.R.S. § 41-4401 from awarding a contract to any Consultant who fails, or whose subconsultants fail to comply with A.R.S. § 23-214(A). Therefore, Consultant agrees that:

Consultant and each subconsultant it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).

A breach of a warranty under this section shall be deemed a material breach of the contract that is subject to penalties including termination of this Agreement.

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

9. CONFIDENTIALITY AND DATA SECURITY

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

Personal identifying information, financial account information, protected health 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, Consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health 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. Consultant must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Consultant will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Consultant in connection with this Agreement is suspected to have been compromised, Consultant shall notify the contracting City department immediately. Consultant 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, it will be the City, not the Consultant, that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Consultant notify individuals affected by a breach or critical breach of the City's information.

Consultant agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Consultant 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, the Consultant agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Consultant must remediate found vulnerabilities in computerized systems they provide; Consultant 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 the Consultant.

Consultant 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.

Consultant 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.

By signing and entering this Agreement the Consultant specifically acknowledges that it is responsible for the security of cardholder data that Consultant possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.

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

Consultant agrees that the requirements of this Section shall be incorporated into all subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice.

The obligations of Consultant under this Section shall survive the termination of this Agreement.

10. CONTACTS WITH THIRD PARTIES

Consultant or its subconsultants shall not contact third parties to provide any information relating to the Services provided under this Agreement without the prior written consent of the City. Should Consultant or its subconsultants be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Consultant or its subconsultants shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Consultant and its subconsultants under this Section shall survive the termination

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

11. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT

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

11.1. For a Consultant with 35 employees or less: Consultant in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Consultant will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Consultant further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

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

that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this Agreement entered into by supplier/lessee. The Consultant further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

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

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

12. AUDIT/RECORDS

The City reserves the right to, at reasonable times, audit Consultant's books and records relative to the performance of service under this Agreement. All records pertaining to this agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

13. COMPLIANCE WITH LAWS

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes and regulations which are, or become applicable to this Agreement and the Services. If a subsequently enacted law imposes substantial additional costs on Consultant, Consultant may request an amendment to this Agreement in order to address such additional costs; however, no such amendment or change order may be approved by the City if it results in an increase of the Agreement amount over that approved by the City Council unless the Council approves an increased Agreement amount.

14. BACKGROUND SCREENING

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

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

Terms of This Section Applicable to all Contractor's Contracts and Subcontracts: Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

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

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

15. BACKGROUND SCREENING – STANDARD RISK

The current risk level and background screening required is **STANDARD RISK LEVEL**.

A standard risk background screening will be performed when the Contract Worker's work assignment will:

- require a badge or key for access to City facilities; or
- allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- allow unescorted access to City facilities during normal and non-business hours.

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 Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.

Contractor Certification; City Approval of Background Screening: Unless otherwise provided for in the Scope, Contractor will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
- for reviewing the results of the background check every five years; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department.
- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.

By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, 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.

16. AGREEMENT AMENDMENTS

Whenever an addition, deletion or alteration to the Services described in **Exhibit C** 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 Consultant before such addition, deletion or alteration shall be performed. Changes to the Services may be made and the compensation to be paid to Consultant may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized by the Phoenix City Council for this Agreement without further authorization by the City Council. It is specifically understood and agreed that no claim for extra work done or materials furnished by Consultant will be allowed except as provided herein, nor shall Consultant do any work or furnish any materials not covered by this Agreement unless first authorized in writing by the City. Any work or materials furnished by Consultant without prior written authorization shall be at Consultant's risk, cost and expense, and Consultant agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

17. NON-ASSIGNABILITY

17.1 This Agreement is in the nature of a personal services contract and Consultant shall have no power to assign this Agreement, including any right, duty, or obligation of Consultant under this Agreement, without the prior written consent of the City. Consultant shall not subcontract with any third

party for any component of the Services without the prior written consent of the City. Any attempt to assign or subcontract without the City's prior written consent shall be void.

17.2 An essential consideration provided to the City by Consultant to induce the City to enter into the Agreement is Consultant's representation that the individual(s) performing services shall include Consultant's principals as selected through the Qualified Vendor solicitation process. Therefore, should such named individual(s) sever their relationship with Consultant, or otherwise be unavailable to carry out Consultant's duties under this Agreement for a period of time deemed to be excessive by the City in its sole and absolute discretion, then the City may, without notice, immediately terminate this Agreement for cause.

18. NOTICES

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

If to Consultant:

CONTACT NAME
COMPANY NAME
ADDRESS
CITY STATE ZIP
TELEPHONE
EMAIL ADDRESS

CONTACT NAME
COMPANY NAME
ADDRESS
CITY STATE ZIP
TELEPHONE
EMAIL ADDRESS

If to the City:

NAME
City of Phoenix, DEPARTMENT
ADDRESS
Phoenix, AZ ZIP
Telephone: (602) NUMBER
E-Mail:
_____@phoenix.gov

NAME, Assistant City Attorney
City of Phoenix, Office of the City
Attorney
200 West Washington, 13th Floor
Phoenix, AZ 85003-1611
Telephone: (602) NUMBER
E-mail:
_____@phoenix.gov

Notice shall 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 service; or 5) five (5) 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. Either party may change its mailing address, telephone number, facsimile number, e-mail address, or the person to receive Notice by notifying the other party as provided in this Section. Notices sent by e-mail and facsimile transmission must 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.

19. INTEGRATION

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

20. GOVERNING LAW; FORUM; VENUE

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern the interpretation and enforcement of this Agreement and any claims or disputes relating to or arising out of this Agreement and/or the Services. Jurisdiction and venue for any action arising out of or relating to this Agreement or the Services shall lie exclusively in the state or federal courts within Maricopa County, Arizona, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

21. FISCAL YEAR CLAUSE

The City's fiscal year begins July 1 and ends June 30 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, Consultant 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.

22. TERMINATION OR SUSPENSION OF SERVICES

22.1 City's Right to Terminate. The City reserves the right to terminate this Agreement without cause, or to abandon the Services, or any part of the Services not then completed, by notifying Consultant in writing. Immediately upon receiving a written notice to terminate or suspend Services, Consultant shall:

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

- Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
- Appraise the work it has completed and submit its appraisal to the City for evaluation.
- In the event of a termination pursuant to this section the Consultant shall 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 Consultant in terminating the work, including demobilization of field service. No payment shall be made for loss of anticipated profits or unperformed services. The City shall have no liability for lost profits or other damages suffered by Consultant as a result of a termination pursuant to this section.

22.2 Final Payment. The City shall make final payment for all Services performed and accepted within sixty (60) days after Consultant has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement.

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

23. PROFESSIONAL COMPETENCY

23.1 Qualifications. Consultant represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Consultant further represents that it is fully experienced and properly qualified with respect to the Services; is in compliance with all applicable law and license requirements; and is adequately equipped, organized, and financed to perform the Services.

23.2 Level of Care and Skill. Services provided by Consultant will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Consultant's work shall in no way relieve Consultant of liability to the City for damages arising from the failure of Consultant to adhere to the aforesaid standard of professional competence.

23.3 Conflict of Interest. Except for the Scope of Work described herein, Consultant shall be prohibited from submitting any bid or proposal on any of the contracting opportunities arising from the Scope of Work. In addition, Consultant shall not have any pecuniary or proprietary interest in any agreement for which Consultant is performing services for the City under this Agreement. Consultant shall refrain from engaging in or carrying on any activity on behalf of any client which is in any way directly averse to the City or its interests without the specific written consent and waiver of the City. Such waiver normally requires the concurrence of City management and the Phoenix City Council. A waiver of conflict of interest may be considered by the City when different personnel within the Consultant's firm are undertaking the concurrent representations and the firm takes sufficient steps to ensure confidentiality.

24. SPECIFIC PERFORMANCE

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

25. FORCE MAJEURE

Consultant shall not be responsible or liable for, or deemed in breach hereof because of, any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including but not limited to fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Consultant in connection with the Services, and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter referred to as "Force Majeure").

26. INTELLECTUAL PROPERTY AND SPECIAL TERMS AND CONDITIONS

26.1 Definitions. "Deliverables" means any and all software, equipment, systems, work to be delivered, services to be performed, or other work products provided by the Consultant within the scope of this Agreement.

"Intellectual Property" means all intellectual property rights, including with limitation, any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design or mask work,

integrated circuit topography, trade secret and all rights of whatsoever nature in computer software and data, Confidential Information, and all intangible rights or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.

“Licensed Patents” shall mean all patents throughout the world (including patents of importation, improvement patents, patents and certificates of addition and utility models, as well as divisions, reissues, continuations, renewals, and extensions of the foregoing), applications therefore, and patents which may issue upon such applications, as to which patents or applications Consultant has at any time during the Term of this Agreement the right to grant licenses of.

“Licensed Products” shall mean any and all Deliverables which employ or are produced by the practice of inventions claimed in the Licensed Patents.

Intellectual Property Rights. Consultant grants to City a nonexclusive, non-transferable (except to a wholly-owned subsidiary of the City), and royalty-free right and license to install, use, and maintain the software, application(s), or similar technology to be provided to the City pursuant to this agreement (collectively, the “Deliverables”) for the City’s internal or business purposes. The City shall further have the right to reproduce the Deliverables to the extent reasonably necessary for such purposes. The City shall not, without the Consultant’s prior written consent, transfer or sub-license its foregoing license rights (except to a wholly-owned subsidiary of the City) or reverse engineer, decompile, or otherwise attempt to derive source code from the Deliverables.

- a. **Intellectual Property Indemnification.** In addition to the indemnification provided for elsewhere in this Agreement, Consultant agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys’ fees, suffered or incurred by the City as a result of any claim that the Deliverables infringe the patents, copyrights, or other intellectual property rights of third parties, provided that Consultant is notified in writing of such claim. The City will reasonably cooperate with Consultant, at Consultant’s expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Consultant obligations set forth herein, if, as a result of any claim of infringement by Consultant, the City is enjoined from using the Deliverables provided under this Agreement, or if Consultant reasonably believes that the Deliverables are likely to become the subject of a claim of infringement, Consultant may, at Consultant’s option and expense, (1) procure the right for the City to continue to use the Deliverables, or (2) replace or modify the Deliverables

so as to make them non-infringing and of equal or superior functional and capability for the purpose for which the Deliverable was provided.

- b. **Limitation of Liability.** CITY WILL NOT BE LIABLE TO CONSULTANT OR ANY OTHER PARTY FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability is independent of any exclusive remedies for breach of warranty set forth in this Agreement.

- c. **Document Delivery.** All documents, together with all unused materials supplied by the City, are to be delivered to the City upon completion or termination of this Agreement before the final payment is made to Consultant.

All documents prepared by Consultant shall be prepared in a format and at a quality approved by the City.

Consultant shall review all documents provided by the City related to the performance of the Services and shall promptly notify the City of any defects or deficiencies discovered in such review.

Consultant shall provide timely and periodic submittals of all documents required of Consultant, including sub-agreements, if any, as such become available to the City for review.

- d. **Reservation.** Nothing in this Agreement shall be interpreted to give either party any rights whatsoever to any Intellectual Property of the other not conceived, created, developed, or reduced to practice pursuant to this Agreement or a related subcontract.

- e. **Warranty Against Infringement.** Consultant warrants that the Deliverables will be free of the rightful claim of any third party for or by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Consultant further warrants that no act or omission of Consultant will result in a third party holding a claim that interferes with the City's enjoyment or use of the Deliverables.

Consultant warrants that it owns or possesses all rights, title and licenses necessary to perform its obligations hereunder.

Consultant warrants that, as of the Effective Date and throughout the Term, Consultant has not conveyed any rights or licenses to any third party regarding the Deliverables.

- f. **Warranty on Deliverables.** Consultant warrants the Deliverables (including hardware, electrical, electronic, mechanical, and all other system components, including installation, but excluding software), for a period of one (1) year starting with the date of final system acceptance (the “Warranty Period”), to be substantially free of any condition which would make the system fail to perform other than in material accordance with the requirements set forth in this Agreement (each such condition to be considered an “Error”). Consultant specifically warrants that all software (also a Deliverable) shall be free of any condition which could make it fail to perform other than in material accordance with the specifications (each such condition to be considered an “Error”) for a period of 9 months after actual installation of the software. If the City reports to Consultant any Errors in the system during the Warranty Period, then Consultant shall, at its expense, use reasonable commercial efforts to modify or replace the faulty hardware, software, electrical component or other system feature as quickly as reasonably practicable. Where possible, both parties shall attempt to resolve Errors through telephone instruction, issuance of updated documentation, corrective code, or hardware replacement or modification.
- g. **Maintenance.** During and after the expiration of the Warranty Period, if a written maintenance and support agreement has not yet been finalized by the parties, the City has the right to receive Basic Maintenance as hereinafter described in addition to the warranty service described above. For purposes of this Agreement, “Basic Maintenance” shall consist of:
- i. The right of the City to contact Consultant by telephone or email and to consult with Consultant regarding installation, functions, operation, Errors, and updates of the Deliverable free of charge;
 - ii. Telephone support: Contact name, contact number, hours of support;
 - iii. Email support: Email address, turn-around response time on emails;
 - iv. On-line bulletin services: website address;
 - v. Tips for more efficient use of software: where to look;
 - vi. Patches and bug fixes: how will patches and bug fixes be handled?
 - vii. Errors: how will Errors be corrected, using commercially reasonable efforts? Downtime?
 - viii. Product updates: how and when will this happen?
 - ix. Installation: how will it be handled?
 - x. Escalation of issues: how will issues be escalated and resolved?
 - xi. Training: what is offered? Included? How many employees? Follow-up?

xii. Compensation: how will issues be compensated for if delay by Consultant in resolving them? Additional services for free? Extension of support/maintenance duration? Availability of Consultant's personnel for error correction.

h. **Acceptance of Deliverables.** Final acceptance of Deliverables shall be provided only after successful completion of testing of the Deliverables. Final acceptance shall not occur until all phases of implementation have been successfully performed. If applicable, acceptance test criteria is set forth below and/or detailed in **Exhibit C**.

Upon completion of any Deliverable, Consultant shall provide a copy thereof to the City for acceptance and approval. At such time, at City request, Consultant will demonstrate to the City that the Deliverable conforms to the description specified for such Deliverable. City will be responsible for any additional review and testing of such deliverable in accordance with any mutually agreed test scripts as may be included in Consultant's project management plan. If the Deliverable does not conform to the description for such Deliverable specified City shall have five business days after Consultant's submission of the Deliverable (the "Acceptance Period") to give Consultant written notice which shall specify the deficiencies in detail. Consultant shall use best efforts to promptly cure any such deficiencies. After completing such cure, Consultant shall resubmit the Deliverable for City review and testing as set forth above. Upon accepting any Deliverable submitted by Consultant, City shall provide Consultant with written acceptance of such Deliverable. If the City fails to provide written notice of any deficiencies within the Acceptance Period, as provided above, such Deliverable shall be deemed accepted at the end of the Acceptance Period.

i. **Non-Disclosure.** In addition to the confidentiality and data security requirements of this Agreement, Consultant shall not disclose, without the City's prior written consent, any information obtained from the City in connection with this Agreement to any person, firm, corporation, association, or other entity other than City employees qualified to receive such information, for any reason or purpose whatsoever, nor shall Consultant make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation or other entity, except the City.

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

Further, the Consultant shall not disseminate or publish of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Consultant shall relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged shall be returned to Consultant pending the resolution of the existing or anticipated litigation.

Consultant agrees that the requirements of this Section shall be incorporated into any subcontracts entered into by Consultant in connection with the Services. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

- j. **Mutual Non-disclosure.** Each party (the “Disclosing Party”) may from time to time during the term of this Agreement disclose to the other party (the “Receiving Party”) certain non-public information regarding the Disclosing Party’s business, including technical, marketing, financial, personnel, planning, and other information (“Confidential Information”). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend ‘confidential’, ‘proprietary’, or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such at the time of disclosure, and shall confirm such Confidential Information as such in writing within thirty (30) days after the date of oral disclosure. Regardless of whether so marked, however, any non-public information regarding the software used in the Deliverable shall be deemed to be Confidential Information.

Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential

Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing party, bound in writing by confidentiality terms no less restrictive than those contained herein. The Receiving Party shall provide copies of such written agreements to the Disclosing Party upon request; provided, however, that such agreement copies shall themselves be deemed the Confidential Information of the Receiving Party.

Confidential Information shall not be deemed to include any information which: 1) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party as reflected in the written records of the Receiving Party; 2) was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; 3) was or becomes lawfully known to the general public without breach of this Agreement; 4) is independently developed by the Receiving Party without access to, or use of, the Confidential Information; 5) is approved in writing by the Disclosing Party for disclosure by the Receiving Party; 6) is required to be disclosed in order for the Receiving Party to enforce its rights under this Agreement; or 7) is required to be disclosed by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing party's expense, in the obtaining of a protective or similar order with respect thereto. The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form upon the written request of the Disclosing Party (except for software).

Consultant agrees that the requirements of this Section shall be incorporated into any subconsultant agreements entered into by Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

- k. **Supervision of Others.** Consultant shall take all reasonable precautions to prevent any other person with whom Consultant is or may become associated (whether as supervisor, employee, owner or otherwise) from acquiring Confidential Information from or through Consultant and/or using or divulging such Confidential Information at any time; provided, however, Consultant shall not be responsible or liable, nor shall it be in breach of this Subsection, if any other person shall acquire, use, or divulge such Confidential Information as a result of a forcible entry into the office or file of City.

27. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION

Consultant shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: 1) any information concerning this Agreement, 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 shall not be used in any advertising or other promotional context by Consultant without the prior written consent of the City.

28. CONFLICTS OF INTEREST

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

The City reserves the right to disqualify Consultant and/or terminate this Agreement in the event that the City determines that Consultant has an actual or apparent conflict of interest with the purposes of this Agreement and the provisions and procedures set forth in the section of this Agreement titled "TERMINATION OR SUSPENSION OF SERVICES" shall apply.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one (1) calendar day written notice to Consultant, terminate this Agreement. In the event of such termination, the City shall be entitled to the same remedies against Consultant as could be pursued in the event of default by Consultant.

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

29. CLAIMS OR DEMANDS AGAINST THE CITY

Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Consultant agrees to adhere to the prescribed procedure for presentation of claims and demands. 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 shall control.

Moreover, nothing in this Agreement shall 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).

30. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS

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

31. CONTINUATION DURING DISPUTES

Consultant agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement, each party shall continue to perform its 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.

Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement shall not be deemed a waiver thereof.

32. HIRING OF EACH OTHER'S PERSONNEL

Without the prior written consent of the other party, each party shall not actively target for hire personnel of the other party through the term of this Agreement and for six months after the expiration or termination of the last Statement of Work executed by the parties. This prohibition does not apply to or affect in any way the City's standard recruitment processes. The City will not owe any compensation whatsoever to the Consultant if Consultant's employee files an employment application, competes successfully and is hired into a City position. Individuals who are employed by Consultant and who are on assignment at the City may file an application for regular City employment and be considered on the same merits and qualifications as would all other applicants. For this reason, compensation to Consultant would not be appropriate and not incurred if such worker succeeds in the selection process and is appointed to a regular City position.

33. NO ISRAEL BOYCOTT

By entering into this contract, the Consultant certifies that it is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

34. LAWFUL PRESENCE REQUIREMENT

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a 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. This requirement **does not** apply to business organizations such as corporations, partnerships or limited liability companies.

35. THIRD PARTY BENEFICIARY CLAUSE

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

36. AGREEMENT INTERPRETATION

Implied Agreement Terms. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

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, Consultant agrees that it will not insist upon, demand, or be entitled to any statement whereby the City agrees to limit in advance or waive any right the City might have to recover lawful damages.

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

37. NON-EXCLUSIVITY; AGREEMENT CHANGES

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

Authorized Changes. The City reserves the right at any time to make changes in any one or more of the following, as long as there is not a conflict with the Scope or Proposal: (a) specifications; (b) methods of shipment or packing; (c) place of

delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within 30 days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the Department Director prior to the institution of the change.

38. WARRANTIES

Quality. Consultant expressly warrants that all goods or services furnished under this Agreement shall conform to the specifications and appropriate standards.

Responsibility for Correction. It is agreed that the Consultant shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance.

Liens. Consultant shall indemnify, defend, and hold the City harmless from liens or other claims by claimants supplying labor or materials to the Consultant or its subcontractors in the performance of the work required under this Agreement. Consultant agrees to secure, at its own expense, the release of any liens relative to the Deliverables.

Professional Responsibility. Consultant shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Agreement in a timely manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States.

Indemnification – Patent, Copyright and Trademark.

In addition to any other indemnification required by this Agreement, Contractor agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys' fees, suffered or incurred by the City as a result of any claim that the Technology Assets infringe the patents, copyrights, or other intellectual property rights of third parties, provided that Contractor is notified in writing of such claim. The City will reasonably cooperate with Contractor, at Contractor's expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Contractor obligations set forth herein, if, as a result of any claim of infringement with respect to the Technology Assets, the City is enjoined from using the Technology Assets, or if Contractor reasonably believes that the Technology Assets are likely to become the subject of a claim of infringement, Contractor may, at Contractor's option and expense, (1) procure the right for the City to continue to use the Technology Assets, or (2) replace or modify the Technology Assets so as to make them non-infringing and of equal or superior functionality and capability for the purpose(s) for which the Technology Assets were provided.

The Contractor's obligation to indemnify, defend, and hold harmless the City pursuant to this subsection shall be reduced to the extent the applicable infringement is caused or alleged to be caused by the alteration or modification of the Technology Assets by the City (including its employees and contractors other than the Contractor and its subcontractors) other than in connection with the ordinary or expected use of the Technology Assets.

WARRANTIES. Contractor warrants the hardware, software, application(s), or other technology assets provided to the City pursuant to this contract (collectively, the "Technology Assets"), for a period of one year starting with the date of final acceptance (the "Warranty Period"), to be substantially free of any condition which would make the Technology Assets fail to perform in material accordance with the requirements set forth in this Agreement, including any statement-of-work or scope-of-work document (each such condition to be considered an "Error"). Contractor specifically warrants that all software Technology Assets shall be free of any condition which could make them fail to perform in material accordance with this agreement (each such condition to also be considered an "Error") for a period of nine months after actual installation of the software. If the City reports to Contractor any errors in the system during the Warranty Period, then Contractor shall, at its expense, use reasonable commercial efforts to modify, replace, or otherwise remedy the faulty hardware, software, electrical component or other Technology Assets as quickly as reasonably practicable. Where possible, both parties shall attempt to resolve Errors through telephone instruction, issuance of updated documentation, corrective code, or hardware replacement or modification.

STANDARDS AND PRACTICES. Technology Assets shall conform to the generally accepted standards and practices of the trade or industry involved. All work shall be executed by personnel skilled in their respective lines of work.

QUALIFICATIONS. Contractor represents that it is fully experienced and properly qualified; is in compliance with all applicable license requirements; and, is equipped, organized, and financed to provide and/or perform the goods and/or services purchased by the City pursuant to this agreement.

INTELLECTUAL PROPERTY WARRANTIES. Contractor warrants that:

- The Technology Assets will be free of the rightful claim of any third party for or by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States;
- No act or omission of Contractor will result in a third party holding any other claim that interferes with the City's enjoyment or use of the Technology Assets;
-
- Contractor owns or possesses all right(s), title(s) and license(s) necessary to perform its obligations hereunder; and
- As of the effective date and throughout the term of this Agreement, Contractor

has not conveyed and will not convey any rights or licenses to any third party regarding the Technology Assets, except to the extent the Technology Assets consist of commercial-off-the-shelf or similar software product(s).

39. CITY'S CONTRACTUAL RIGHTS

Right to Assurance. Whenever one party to this Agreement 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 Agreement.

Non-Exclusive Remedies. The rights and remedies of the City under this Agreement are non-exclusive.

Default. In case of default by the proposer, the City may, by written notice, terminate this Agreement and repurchase from another source and may recover the excess or additional costs caused thereby by (1) deduction from an unpaid balance due; (2) collection against the proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

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

CONSULTANT –

CITY OF PHOENIX,
a municipal corporation

ED ZUERCHER, City Manager

By:

Title:

Date:

By:

Date:

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk

Date

EXHIBIT A - Insurance and Indemnification

**REFER TO SOLICITATION RFQu 20-045
Survey Services, Marketing, Information Gathering and Analyzing Data**

SECTION IV – INSURANCE AND INDEMNIFICATION

EXHIBIT B – Consultants Insurance Certificate

EXHIBIT C – Scope of Work / Statement of Work / Services

**REFER TO SOLICITATION RFQu 20-045
Survey Services, Marketing, Information Gathering and Analyzing Data**

SECTION V – SCOPE OF WORK

EXHIBIT D – Fee Schedule

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***Rates for awarded vendor will be added here
when the contract is finalized.**



**EXHIBIT E – SUPPLEMENTAL TERMS
AND CONDITIONS**

CITY OF PHOENIX

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STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

- Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
- Should:** Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
- May:** Indicates something that is not mandatory but permissible.

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

- “A.R.S.”** Arizona Revised Statute
- “Buyer” or “Procurement Officer”** City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
- "City"** The City of Phoenix
- "Contractor"** The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.
- "Contract" or "Agreement"** The legal agreement executed between the City of Phoenix, AZ and the Contractor.
- “Days”** Means calendar days unless otherwise specified.



“Deputy Director” Finance The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

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

“Offer” Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

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

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

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

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

2. CONTRACT INTERPRETATION

2.1. APPLICABLE LAW: This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.



2.2. 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:

- 2.2.1. Special terms and conditions
- 2.2.2. Standard terms and conditions
- 2.2.3. Amendments
- 2.2.4. Statement or scope of work
- 2.2.5. Specifications
- 2.2.6. Attachments
- 2.2.7. Exhibits
- 2.2.8. Instructions to Contractors
- 2.2.9. Other documents referenced or included in the Solicitation

2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER

The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

2.4. SEVERABILITY

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

2.5. NON-WAIVER OF LIABILITY

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



2.6. PAROL EVIDENCE

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

3. CONTRACT ADMINISTRATION AND OPERATION:

3.1. 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 completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

3.2. DISCRIMINATION PROHIBITED

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

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



3.3. 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 Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

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



agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

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

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

3.4. LEGAL WORKER REQUIREMENTS

The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

- 3.4.1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
- 3.4.2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
- 3.4.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

3.5. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS

The 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, the Contractor will provide the City:

- 3.5.1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract
- 3.5.2. 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, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor’s facilities (during normal business hours).

3.6. COMPLIANCE WITH LAWS

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor’s business records, including personnel records to verify any such compliance.

Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor’s acts.

3.7. 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

3.8. CONTINUATION DURING DISPUTES

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.



3.9. EMERGENCY PURCHASES

The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4. COSTS AND PAYMENTS

4.1. GENERAL: Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. 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. Payment terms are specified in the Offer.

4.2. PAYMENT DEDUCTION OFFSET PROVISION: Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

4.3. 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.

4.4. 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.

4.5. NO ADVANCE PAYMENTS: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

4.6. FUND APPROPRIATION CONTINGENCY: The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.



- 4.7. 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 the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. 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. The Contractor will promptly notify the City of such price reductions.
- 4.8. F.O.B. POINT:** All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.

5. CONTRACT CHANGES

- 5.1. CONTRACT AMENDMENTS:** Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- 5.2. ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- 5.3. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

6. RISK OF LOSS AND LIABILITY

- 6.1. 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.
- 6.2. 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 the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

- 6.3. 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.

- 6.4. 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.
- 6.5. 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 Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate



right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- 6.6. 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.

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 agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- 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 the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid 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:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- 7.7. COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- 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 to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

8. CONTRACT TERMINATION

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

8.2. CONDITIONS AND CAUSES FOR TERMINATION:

8.2.1 This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but



undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8.2.2 The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

8.3. 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.

9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. You may also find information at <https://www.phoenix.gov/finance/plt> or



<https://www.azdor.gov/Business.aspx>. Once your offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in a offer price.

10. TAX INDEMNIFICATION

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

11. 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.

12. NO ISRAEL BOYCOTT

By entering into this contract, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.



SPECIAL TERMS AND CONDITIONS

1. PRICE

All labor rate prices submitted shall be firm and fixed for the initial year contract period. Thereafter, price adjustments will be considered annually provided the adjustments are submitted in writing with 30-days advance notice. Requests shall be accompanied with written documentation from the manufacturer and/or published indexes confirming the labor rate increase. The City of Phoenix will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to the procurement officer at the address on the front page of the solicitation, referencing the solicitation #. Price increases agreed to by any staff other than Deputy Finance Director or Department Director are invalid. The contractor acknowledges and agrees that it will repay all monies paid as a result of a requested price increase unless the price increase was specifically approved in writing by the Deputy Finance Director or Department Director.

2. PRICE ADJUSTMENTS

All prices shall be firm and fixed for the initial year. Pass-through price adjustments will be accepted every year after adjustments are submitted in writing. Adjustments will only be made after 30 days' notice. Requests shall be accompanied with written documentation from the manufacturer confirming the price increase. The City will be the sole judge in determining the allowable increase. For the purposes of this Agreement, [Pass-through costs](#) means those type and categories of costs deemed not to be within the control of Contractor, and not known at the time of the submittal or offer.

3. METHOD OF ORDERING

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

4. METHOD OF INVOICING

Invoice to submit monthly invoice by email in .pdf format to invoices@phoenix.gov and must include the following:

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



- FOB terms.
- Remit to address

5. METHOD OF PAYMENT

Contractor will be paid on a monthly basis in arrears. Payment to be made from Contractor's invoice. Invoices must contain the agreement number or Offer number under which the contract is awarded.

6. PARTIAL PAYMENTS

Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.

7. SUPPLIER PROFILE CHANGES

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

8. ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

9. AUTHORIZED CHANGES

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

10. SUSPENSIONS OF WORK

The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This



suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

11. HOURS OF WORK

All work under this contract shall be coordinated with the City’s project manager. Any changes to the established schedule must have prior written approval by the City’s project manager.

12. POST AWARD CONFERENCE

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

13. PERFORMANCE INTERFERENCE

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

Department Contact: Deanna Jonovich

Phone: Enter (602) 262-7684

14. COOPERATIVE AGREEMENT

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona. A current listing of eligible entities may be found at www.mesaaz.gov/business/purchasing/save. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.

15. ADVERTISING

Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director or Department Director, and the City will not unreasonably withhold permission.

16. EXCLUSIVE POSSESSION

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the



City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

17. 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.

18. LICENSES AND PERMITS

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

19. TRANSITION OF CONTRACT

Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this contract.

20. BACKGROUND SCREENING

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

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

20.2 Terms of This Section Applicable to all Contractor's Contracts and Subcontracts: Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.



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

20.4 **Continuing Duty; Audit:** Contractor’s obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor’s records.

21. BACKGROUND SCREENING – STANDARD RISK

The current risk level and background screening required is **STANDARD RISK LEVEL**.

A standard risk background screening will be performed when the Contract Worker’s work assignment will:

- require a badge or key for access to City facilities; or
- allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- allow unescorted access to City facilities during normal and non-business hours.

21.1 **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 Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire.



21.2 Contractor Certification; City Approval of Background Screening:
Unless otherwise provided for in the Scope, Contractor will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
- for reviewing the results of the background check every five years; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department.
- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, 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.

22. CONFIDENTIALITY AND DATA SECURITY

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

Personal identifying information, financial account information, protected health 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, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health 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. Contractor must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Contractor will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Contractor in connection with this Agreement 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, it will be the City, not the Contractor that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Contractor notify individuals affected by a breach or critical breach of the City's information.

Contractor agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the 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, the 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, the 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 the Contractor.

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.

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.

By signing and entering this Agreement the Contractor specifically acknowledges that it is responsible for the security of cardholder data that Contractor possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.

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

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

23. SECURITY INQUIRIES

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this



Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.