

CITY OF PHOENIX  
Community and Economic Development Department  
HERMOSILLO TRADE DEVELOPMENT SERVICES – RFP-CED22-HTDS

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**Hermosillo Trade Development Services RFP  
RFP-CED22-HTDS  
Request for Proposals (RFP)**

**Schedule**

<b>ACTIVITY (All times are local Phoenix time)</b>	<b>DATE</b>
Issue RFP	June 13, 2022
Pre-Proposal Meeting (10:00 a.m.)	June 22, 2022
Submittal of Written Questions Deadline (2:00 p.m.)	June 29, 2022
Responses to Written Questions	July 6, 2022
Proposal Deadline (2:00 p.m.)	July 13, 2022
Short Listing, if applicable	July/August
Evaluation and Proposer Interviews, if applicable	August
Award Recommendation to Phoenix City Council	September/October

**Submit proposals and requests for alternate formats to:**

Tamara John, Procurement Officer  
City of Phoenix Community and Economic Development Department  
200 West Washington Street, 20<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611  
Telephone: 602-495-0374 (7-1-1 Friendly)  
[procurement.request.ced@phoenix.gov](mailto:procurement.request.ced@phoenix.gov)

<https://solicitations.phoenix.gov/Solicitations/Details/1263> (RFP Webpage)

This RFP does not commit the City to award any agreement. All dates subject to change.

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## I. RFP PROCESS

### A. Introduction

The City of Phoenix Community and Economic Development Department (City) is seeking trade development services in Hermosillo, Mexico to facilitate economic activity between northern Mexico and Phoenix, including creating business to business connections and attracting employers, developers, and investors to Phoenix. No subcontracting is permitted for this business opportunity.

### B. Minimum Qualification

The following minimum qualifications are non-negotiable. A proposer cannot use a subcontractor's experience or office to meet these minimum qualifications.

1. As of the proposal deadline listed on page 1, each proposer and each proposer's primary consultant must have a minimum of 3 years of experience providing economic development or Mexico trade development services.
2. Each proposer must currently have a physical office in Hermosillo and must have had an office in Hermosillo for the 12 months preceding the proposal deadline listed on page 1. The proposer must have operated this office directly.

Each proposer must demonstrate these minimum qualifications in its proposal as further described in **Section III (B)** or its proposal will be disqualified.

### C. Definitions

1. Lead – a company that has expressed general interest in expanding into the United States (U.S.), is in an early exploratory stage with no set parameters and there is an opportunity for the City to influence its decision-making process.
2. Prospect – a company that has expressed interest in the U.S. and is considering Phoenix, knows and is willing to share its capital expenditures, number of jobs, average salary, competing regions and timeline for a decision.
3. Primary Consultant – the individual employed by the proposer who will perform the majority of the scope of work if the proposer is awarded an agreement through this RFP.
4. Proposer – any entity submitting a proposal in response to this RFP.
5. Subcontractor – a business that performs work for the proposer or a person who performs work for the proposer but is not an employee of the proposer. No subcontractors can be used on the agreement resulting from this RFP.

6. Trade Development Services – consulting services focused on creating business-to-business connections and/or growing the trade of goods and services between Mexico and the U.S.

**D. Agreement Term and Contractual Relationship**

The initial agreement term will be 1 year with up to 4 additional one-year renewal options, to be exercised at the sole discretion of the City. Proposers are responsible for reading the draft agreement (**Attachment E**) and submitting any questions about it in accordance with the process listed in **Section I (F)**. By submitting a proposal, each proposer agrees it will be bound by the agreement, which may be modified by the City before it is signed by the recommended proposer.

**E. Pre-Proposal Meeting**

Proposers are strongly encouraged to attend the pre-proposal meeting at the date and time listed on page 1 via Webex and/or conference call. The purpose of this meeting is to review this RFP and respond to proposer questions. Please email [procurement.request.ced@phoenix.gov](mailto:procurement.request.ced@phoenix.gov) to register for this meeting.

**F. Proposer Questions and Notification**

Proposers are advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not be cause for waiver of any portion of the RFP or subsequent agreement.

All questions about this RFP must be submitted in writing no later than the deadline listed on page 1 to [procurement.request.ced@phoenix.gov](mailto:procurement.request.ced@phoenix.gov). Please list the name of this RFP in the subject line when submitting questions. All written questions received by the deadline will be responded to in writing and posted on the [RFP Webpage](#).

**G. Changes to the RFP**

Changes to this RFP will be issued as a written addendum and posted on the [RFP Webpage](#). The City shall not be responsible for any oral instructions given by any City employee, consultant, or official regarding RFP specifications, instructions, or documents.

Although registered pre-proposal meeting attendees, and potential proposers who request such notification in writing, will be notified by email when documents related to this RFP are available on the [RFP Webpage](#), proposers are responsible for obtaining all information posted on the website.

**II. SCOPE OF WORK**

The successful proposer will provide trade development consulting services to facilitate economic activity in northern Mexico and Phoenix, Arizona. The consulting services will include creating business-to-business connections and attracting employers, developers, and investors to Phoenix. The City’s Targeted Industry Sectors for trade development include:

Primary Targeted Industry Sectors	Secondary Targeted Industry Sectors
1. Advanced Business Services 2. Aerospace and Defense 3. Bioscience 4. Healthcare 5. Manufacturing and Emerging Technologies 6. Software Development and Cybersecurity	7. Commercial Development 8. Food Manufacturing 9. Agri-tech 10. Distribution 11. Retail/Franchise Concepts

**A. Business-to-Business Connections**

The successful proposer will develop and enhance business-to-business connections between Mexico-based companies and Phoenix-based companies, including:

1. Identify, qualify and support trade and sales opportunities for Phoenix companies seeking market expansion in Mexico as well as Phoenix companies seeking products, services and supply chain opportunities in Mexico and Mexico-based companies looking for business-to-business opportunities in Phoenix (suppliers, vendors, distributors) in the City’s Targeted Industry Sectors.
  - a. Work with City staff and Phoenix area chambers of commerce to assist chamber members seeking exporting opportunities in northern Mexico.
  - b. Arrange business-to-business trips, as needed and approved by City staff.
2. Conduct 1 comprehensive "Doing Business in Phoenix" Roadshow program in Hermosillo, as approved by the City. Fully support other Mexico trade missions as needed and approved by City staff. A minimum of one trade mission per year is expected.

**B. Physical Presence in Mexico**

1. The successful proposer will provide economic development staff and a City office in Hermosillo to maintain the City’s presence in Mexico and leverage its staff and space to maximize opportunities to support trade expansion between northern Mexico and Phoenix.
2. The staff to be assigned to the agreement resulting from this RFP should have economic development or Mexico trade development experience with

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companies in the City's Target Industry Sectors listed in Section II above. At least one member of the assigned staff must speak and write fluently in both English and Spanish.

3. The successful proposer must have at least 1 meeting room and office space, as well as staff, available Monday through Friday, from 8:00 A.M. to 5:00 P.M. (local time in Hermosillo), to meet with Mexico-based companies looking for a Phoenix presence, Phoenix-based companies looking for a Mexico presence, and companies looking to transact business in, or explore supply chains between, Phoenix and Mexico. The City will work with the successful proposer on brand identification and signage.

**C. Business Expansion Opportunities in Phoenix**

The successful proposer will foster Phoenix business expansion connections for Mexico-based companies seeking growth opportunities in the U.S., including:

1. Participate in trade shows, conferences, networking opportunities, and summits focused on the City's Targeted Industry Sectors, to be identified by City staff and successful proposer.
2. Identify local business and trade organizations in Hermosillo and participate in local events with those organizations.

**D. Investment Opportunities in Phoenix**

The successful proposer will work with City staff to identify prospective Phoenix investments for Mexico-based investors seeking business venture opportunities in the U.S., including:

1. Advance Foreign Direct Investment (FDI) prospects targeting Phoenix for expansion and development opportunities.
2. Assist existing Mexican FDI in Phoenix to expand, including assistance with relocating Mexican supply chain elements.

**E. Reporting**

The successful proposer will provide all reports outlined below. All reports must be in an electronic format agreed upon between the successful proposer and the City.

1. Business-to-Business Connections
  - a. Provide a detailed monthly summary of export leads (target: 3 leads per month) and lead dissemination.
  - b. Provide a detailed monthly report on business-to-business connections, for Phoenix buyers in northern Mexico and northern Mexico buyers in Phoenix.
  - c. Develop a summary of each Roadshow event that lists the names/companies of attendees and scope of follow-up for each. This summary will be submitted to City staff within 30 days of the event.

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2. Business Expansion Opportunities in Phoenix
  - a. Provide a detailed report on participation at local (Hermosillo) business and trade organizations events and identify who those organizations are in Hermosillo, with the next monthly report. (target: minimum of 1 event per quarter).
  - b. Provide detailed summary reports for all attended events, with the next monthly report, that include highlighted opportunities and intended follow up (target: minimum of 1 event per quarter).
3. Investment Opportunities in Phoenix
  - a. Provide detailed monthly summary of FDI prospects (target: 1 prospect per month).
  - b. Provide detailed monthly summary of FDI pipeline activity (target: 3 prospects in pipeline by end of agreement).
  - c. Provide detailed monthly report related to businesses seeking for expansion opportunities in Phoenix in the sectors of interest.

The City reserves the right to add related services to the scope of work as mutually agreed upon with the successful proposer.

**F. Consulting Fees**

Each proposer will propose its hourly rates on **Attachment C**. The City and the recommended proposer will negotiate a per task fee. Prior written approval from the City will be required for all reimbursable expenses, which must comply with **Section 2 of Attachment E**.

**III. PROPOSAL INSTRUCTIONS**

**A. Delivery of Proposals**

Proposals must be submitted by the deadline listed on page 1 to [procurement.request.ced@phoenix.gov](mailto:procurement.request.ced@phoenix.gov). All narratives must be submitted in a Microsoft Word document. **Attachments A-D** and **Section III (B) (Item 3)** should be scanned and submitted as an Adobe PDF file. **Proposals received after the deadline will be disqualified as non-responsive.**

**B. Form of Proposals**

Proposals must conform to the following format. Proposals that are incomplete; conditional; obscure; or that contain additions not requested, changes or exceptions to material provisions or requirements of this RFP; or irregularities of any kind, are subject to disqualification. Proposers must not take any exceptions to any terms, conditions or material requirements of this RFP. Proposals submitted with exceptions will be deemed non-responsive and disqualified from further consideration. Proposers must conform to all the requirements specified in the

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RFP. The City encourages each proposer to ask questions in compliance with **Section I (F)** rather than including any exception in its proposal.

Proposals are limited to 20 letter-size pages with 12 pt. Arial font, excluding **Attachments A-D** and **Section III (B) (Item 3)**. The pages of each proposal should be numbered. The City will not review or consider any information submitted via Dropbox or Google Docs, videos, or weblinks embedded in proposals.

Each proposer must provide the following items.

1. Executed Affidavit (**Attachment A**)
2. Signed Conflict of Interest and Solicitation Transparency Disclosure Form (**Attachment B**)
3. Signed Landlord/Property Management Company Letter

Each proposer must submit a signed letter from its landlord or property management company as documentation of the minimum qualification listed in **Section I (B) (2)**. This letter must specify that the proposer currently has, and has had for the 12 months immediately preceding the proposal deadline, an office in Hermosillo, Sonora in Mexico. If a proposer relocated to a new office in the same city within the last 12 months, the proposer must submit letters from multiple landlords and/or property management companies as evidence for the last 12 months with no gaps in time. If a proposer owns its building or is unable to submit such a letter, the proposer must follow the process described in **Section I (F)** to submit a question that specifies the type of documentation the proposer wants to submit **AND** receive City approval through that same process.

The description and photographs required in **Section III (B) (Item 6)** cannot be used as a substitute for this required Landlord/Property Management Company Letter.

4. Qualifications & Experience Statement

In this section, each proposer must provide the following information.

- a. Each proposer must provide sufficient documentation, including resume, to demonstrate the primary consultant identified to provide these services meets the minimum qualification listed in **Section I (B) (1)** and is qualified to perform the scope of work described in this RFP. Each proposer must also address each bulleted item listed in **Section IV (C) (Item 1)**.
- b. Each proposer must complete the Experience Summary (**Attachment D**) to demonstrate the proposer meets the minimum qualification listed in **Section I (B) (1)**. Each proposer must also address each bulleted item listed in **Section IV (C) (Item 3)**.



5. Proposed Approach to Scope of Work

In this section, each proposer must provide a narrative description of its approach to the scope of work, including:

- a. How the proposer will achieve the performance metrics listed in **Section II**.
- b. An organization chart depicting specific roles and responsibilities of the staff identified to perform these services.
- c. An estimated number of hours needed per staff member per month to perform each area of work.

6. Proposer's Office Space

In this section, each proposer must provide a written description and both exterior and interior photographs of the proposer's office area to be used to provide a physical presence for the City as described in **Section II (B)**. This description and these photographs cannot be used as a substitute for the Landlord/Property Management Company Letter required in **Section III (B) (Item 3)**.

7. Proposed Hourly Rates

In this section, each proposer must provide a completed **Attachment C**.

#### IV. PROPOSAL EVALUATION

##### A. Determining Responsiveness and Responsibility

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

1. Responsiveness: Non-responsive proposals will not be considered in the evaluation process. The RFP states requirements that determine responsiveness, and the RFP includes terms and conditions that if included or excluded from proposals (as the case may be) will render a proposal non-responsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a proposal that includes unacceptable exceptions, conditions, reservations, or understandings will be rejected as non-responsive. Alternatively, the City in its sole discretion may instruct in writing that any proposer remove the conditions, exceptions, reservations, or understandings. If the proposer fails to do so in writing, the City may determine the proposal to be non-responsive.

2. Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the consultant, late

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deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the proposer be a responsible consultant. Responsibility includes the proposer's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

The Procurement Officer, in consultation with legal counsel, will review each proposal to determine if the proposer is responsible. The City's determination as to whether a proposer is responsible will be based on the information furnished by the proposer, interviews (if any), any information at the City's request, information in any best and final offer, and information received from proposer's references, including information about proposer's past history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the agreement resulting from this RFP will not be made until any necessary investigation, which each proposer agrees to permit by submitting its proposal, is made by the City as it deems necessary. A review of responsibility may occur up to agreement award.

A proposer's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such proposer.

**B. Evaluation Panel**

If applicable, the CEDD Director will appoint an evaluation panel to review the proposals and recommend a proposer to be awarded the agreement resulting from this RFP. The CEDD Director may accept this recommendation and forward it to the Phoenix City Council or reject it.

The evaluation panel may interview all the proposers or a short list of proposers, or the evaluation panel may evaluate the proposals solely on the materials submitted by the proposal deadline. If a short list process is used, the evaluation panel will use the evaluation criteria established in this RFP to identify the proposers most likely to be successful in the evaluation process. The short-listed proposers may then be scheduled for interviews with the evaluation panel. If interviews are conducted, the evaluation panel may consider information from the interviews that clarifies the materials submitted by the proposal deadline.

The evaluation panel will determine a consensus score for each evaluation criterion, which will then be added together to determine a total consensus score for each proposal.

**C. Evaluation Criteria**

The evaluation panel will review the information submitted in the proposals to address the requirements listed in the corresponding tabs of **Section III (B)**. All responsive and responsible proposals will be evaluated based on the following criteria. This is a best-value-to-the-City procurement, which means the evaluation

panel will look at all factors, not just the proposed fees, in selecting the recommended proposer.

**1. Primary Consultant’s Qualifications and Experience (0-300 points)**

- Number of years and type of experience:
  - Providing economic development and/or Mexico trade development services
  - Developing business to business connections between Mexico-based companies and Phoenix-based companies
  - Managing or overseeing business development staff in Mexico
  - Fostering Phoenix business expansion connections for Mexico-based companies
  - Identifying Phoenix investments for Mexico-based investors
- Familiarity with USMCA or similar agreements

**2. Approach to Scope of Work (0-250 points)**

- Proposed approach to the Scope of Work, including estimated number of hours
- Proposer’s office space to be used for this Scope of Work
- Organizational chart

**3. Proposer’s Qualifications and Experience (0-250 points)**

- Number of years and type of experience:
  - Providing economic development and/or Mexico trade development services
  - Developing business-to-business connections between Mexico-based and Phoenix-based companies
  - Managing or overseeing business development staff in Mexico
  - Fostering Phoenix business expansion connections for Mexico-based companies
  - Identifying Phoenix investments for Mexico-based investors
- Familiarity with USMCA or similar agreements

**4. Primary Consultant’s Hourly Rate (0-200 points)**

**D. Negotiations**

As needed, the Procurement Officer will facilitate negotiations between City staff and the top-ranked proposer identified by the evaluation panel.

## V. GENERAL TERMS AND CONDITIONS OF PROPOSAL

### A. Solicitation Transparency Policy

Commencing on the date and time this RFP is published, potential or actual proposers including their representatives, employees, agents, proposed partners, subcontractors, joint venturers, members, or any of their lobbyists and attorneys (collectively for this **Section V (A)** only, the proposer), shall only discuss matters associated with this 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 agreement is awarded or all proposals 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. As long as the solicitation is not discussed, proposers may continue to conduct business unrelated to this solicitation with the City. Proposers are also prohibited from contacting any evaluation panel members.

A proposer may discuss its proposal or this RFP with the Mayor and/or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer identified on page one, 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.

With respect to the selection of the successful proposer, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the evaluation panel or selecting authority must be provided in writing to all prospective proposers.

This policy is intended to create a level playing field for all proposers, assure agreements are awarded in public, and protect the integrity of the selection process. **Proposers that violate this policy shall be disqualified.** After official notice is received by the City for disqualification, the proposer may follow the Protest process, unless the RFP is cancelled without notice of intent to re-issue.

"To discuss" means any contact by a proposer, regardless of whether the City responds to the contact. The City interprets the policy as continuing through a cancellation of a solicitation until City Council award of the agreement, as long as the City cancels with a statement that the City will reissue the solicitation. Additionally, should the procurement officer cancel this solicitation and announce the City's intent to reissue the same solicitation or issue a similar solicitation, any

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proposer disqualified from this solicitation process for violating the Solicitation Transparency Policy will also be disqualified from the subsequent solicitation.

**B. Materials Submitted**

All materials submitted by proposers shall become the property of the City and become a matter of public record available for review pursuant to Arizona law. Each proposer shall mark any information submitted as part of its proposal that the proposer deems confidential or proprietary (collectively Confidential Information). If the City receives a request to review or disclose such Confidential Information, the City will provide the proposer written notice of the request to allow the proposer the opportunity to obtain a court order to prevent the disclosure or review of such Confidential Information. The proposer must obtain and deliver to the Procurement Officer a court order within seven calendar days of the date of the City's written notice. If no court order is issued and received by the Procurement Officer within the seven-day period, the City may disclose or allow the review of such Confidential Information. If a proposer intends to seek a Court Order to shield its Confidential Information, the protest period will be extended the same number of calendar days to allow for this process.

**C. Award Recommendation**

On the day the City posts the award recommendation at [RFP Webpage](#), the procurement file for this RFP will be available for proposers and the public to review. The procurement file consists of all proposals, the RFP and all addenda, advertising documents, agendas, meeting minutes, presentations (if any), signed conflict of interest statements by evaluation panel members, and evaluation panel consensus scoring.

**D. Equal Opportunity Requirements**

The successful proposer must comply with Phoenix City Code, Chapter 18, Article V, as amended. Proposers should direct any questions about these requirements to the Equal Opportunity Department at 602-262-6790.

**E. City's Reservation of Rights**

The City reserves the right to take any course of action the City deems appropriate at the City's sole and absolute discretion, which may include:

1. Waiving any defects or informalities in any proposal or proposing procedure;
2. Accepting or rejecting any or all proposals or any part of any or all proposals;
3. Canceling the RFP in part or in its entirety;
4. Reissuing the RFP with or without modification;
5. Negotiating with any qualified proposer;
6. Extending the deadline for proposals; and/or
7. Requesting additional information from any or all proposers.

**F. City's Right to Disqualify for Conflict of Interest**

The City reserves the right to disqualify any proposer that fails to provide information or data requested herein or that provides materially inaccurate or misleading information or data. The City reserves the right to disqualify any proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposals submitted or any other data available to the City. This disqualification is at the sole discretion of the City. By submission of a proposal hereunder, the proposer waives any right to object now or at any future time, before any body or agency, including the City Council 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.

Additionally, any proposer or any member or affiliate of a proposing team that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this RFP, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

**G. Preparation Costs**

Under no circumstance will the City be responsible for any costs incurred by anyone in: 1) responding to this RFP; 2) any subsequent follow up to the proposal; or 3) any subsequent negotiations of an agreement.

**H. Additional Investigations**

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any proposer submitting a proposal, including, without limitation, information provided by former employees and/or creditors.

**I. Proposer Certification and Affidavit**

By submitting a proposal, each proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of an agreement to any employee, official or current contracting consultant of the City. Any proposer unable to comply with any required certifications may be disqualified.

In compliance with A.R.S. §§ 1-501 and -502, the City shall require any successful proposer that submits its proposal as a sole proprietorship or as an individual to complete the [Affidavit of Lawful Presence](#) prior to the award of any agreement resulting from this process.

**J. Covenant Against Contingent Fees Paid by Proposer**

By submitting a proposal, the proposer certifies it has not employed or retained

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any person or company, other than a member of its proposed team or a bona fide employee working solely for the proposer, to solicit or secure the agreement described in this RFP, and that no agreement has been made to pay the proposer or any member of its team any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or execution of such agreement. For breach or violation of this certification, the City shall have the right to annul any agreement entered into with a proposer as result of this RFP without liability, or in its discretion to deduct the agreement price or consideration, or otherwise, recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**K. No Gratuities**

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City nor its advisors for the purposes of influencing this selection. Any attempt to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for disqualification.

**L. Protests**

A proposer may protest the contents of an RFP no later than 7 days before the proposal deadline when the protest is based on an apparent alleged mistake, impropriety or defect in this RFP. Protests filed regarding this RFP may be addressed by an amendment to the RFP or denied by the City. If denied, the evaluation process will proceed unless the City determines it is in the City's best interests to set new deadlines, or amend, cancel, or re-issue the RFP. Therefore, unless otherwise notified by a formal amendment, the protester must adhere to all RFP dates and deadlines, including timely submittal of a proposal, regardless of filing a protest.

A proposer that submits a proposal that is disqualified may challenge the disqualification by filing a protest within 7 calendar days of the date of the City's notice of disqualification.

An unsuccessful proposer may challenge an award recommendation by filing a protest within seven calendar days after the award recommendation has been posted at [RFP Webpage](#). Proposers that have had their proposals disqualified may not protest an award recommendation.

All protests must be in writing, filed with the Procurement Officer listed on page 1, and include all of the following:

1. Name of the RFP challenged;
2. Name, address and telephone number of the protester;
3. Detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
4. Form of relief requested; and

5. The signature of the protester or its legal representative.

The Procurement Officer will not review any supplements or amendments to a protest or multiple protests submitted by the same proposer. The Procurement Officer will issue a written decision within a reasonable period of the protest filing. The Procurement Officer may provide copies of the protest and the City's written decision to the recommended proposer. The City will not request City Council authorization to award this agreement until the protest process is complete. All protests must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43), and administrative regulations. Any protests not submitted within the time requirements will not be considered.

**M. Execution of Agreement**

The City will send the final agreement to the recommended proposer. Within 30 calendar days from the date the agreement is sent, the recommended proposer must sign and submit the final agreement to the City. If the City does not receive the signed agreement and all other required documentation from the recommended proposer within calendar 30 days, the City may consider not awarding the agreement to the next highest-ranked proposer.

Until the City executes an agreement with the recommended proposer, no contractual relationship exists. If the recommended proposer is subject to regulation by the Arizona Corporation Commission (ACC), it must be authorized to transact business in Arizona and be in good standing with the ACC at the time it signs the agreement.



**Attachment A**  
**AFFIDAVIT**

**Assurances**

The undersigned proposer hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Proposals (RFP) and referenced materials. Proposer further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the proposer.

The undersigned proposer acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on proposer's submitted information and the representation that proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting agreement.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
4. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any proposer errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
7. This proposal is valid for a minimum of 120 days after the RFP proposal deadline.
8. All costs incurred by proposer in connection with this proposal shall be borne solely by proposer. Under no circumstances shall the City be responsible for any costs associated with proposer's proposal or the RFP process.
9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
10. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
11. To the best of the proposer's knowledge, the information provided in its proposal is true and correct and neither the undersigned proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

**CITY OF PHOENIX**  
**Community and Economic Development Department**  
**HERMOSILLO TRADE DEVELOPMENT SERVICES – RFP-CED22-HTDS**

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**Legal Status**

1. Proposer intends to operate the business as (check one):

- |                                |     |                      |     |
|--------------------------------|-----|----------------------|-----|
| Corporation*                   | ( ) | Non-Profit 501(c)(3) | ( ) |
| Government Entity              | ( ) | Partnership*         | ( ) |
| Limited Liability Corporation* | ( ) | Sole Proprietorship  | ( ) |
| Other (Please describe: _____) |     |                      | ( ) |

Identify the members, if LLC, partners, if a partnership, or officers, if a corporation, of the proposer (add lines as needed).

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For the purpose of this RFP, addenda and exhibits, any questions regarding the principals are referring to the officers, partners and members as disclosed.

2. In the past 10 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. **Yes ( ) No ( )**
3. Has the proposer or any of its principals or its principal's affiliates been declared to be in default under any obligation to or contract with the City? If "Yes," please provide details concerning the nature of the default, including the City contract number. **Yes ( ) No ( )**
4. Are there any pending liens, claims or litigation in excess of \$500,000 involving proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors? If "Yes," provide detailed information regarding complaints. **Yes ( ) No ( )**
5. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors, been involved in any lawsuits in the past 10 years? If "Yes," provide list. **Yes ( ) No ( )**
6. Has the proposer's or any of its principals or its principals' affiliate's contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 10 years? If "Yes," provide name, location, and date of the contract(s). **Yes ( ) No ( )**
7. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. **Yes ( ) No ( )**

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**References**

Proposer shall furnish the names and contact information for 3 clients for whom the proposer is furnishing or has furnished services similar to those described in this RFP. Do not list City of Phoenix employees or officials as references.

1. Company and Reference Name: \_\_\_\_\_  
Telephone and E-Mail: \_\_\_\_\_
2. Company and Reference Name: \_\_\_\_\_  
Telephone and E-Mail: \_\_\_\_\_
3. Company and Reference Name: \_\_\_\_\_  
Telephone and E-Mail: \_\_\_\_\_

**Signature(s)**

Proposer's Legal Name: \_\_\_\_\_  
*\*The successful proposer must be authorized to transact business in Arizona and be in good standing prior to contract award.*

Printed Name of Authorized Representative\*: \_\_\_\_\_

Title: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Telephone and Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
*\*Proposal must be signed by an individual authorized to contractually bind the proposer.*

Name of Joint Venture Partner (if applicable): \_\_\_\_\_

Printed Name of Authorized Representative\*: \_\_\_\_\_

Title: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Telephone and Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
*\*Proposal must be signed by an individual authorized to contractually bind the joint venture partner.*

**NOTARIZED**

Signed and sworn before me this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_

Notary Signature: \_\_\_\_\_ Affix Seal:

My Commission Expires: \_\_\_\_\_

**Attachment B**  
**CONFLICT OF INTEREST AND SOLICITATION TRANSPARENCY DISCLOSURE  
FORM**

**Each proposer shall complete, sign, and submit this form with its proposal. Any proposal received without this completed and signed form will be disqualified as non-responsive.**

1. First Name, Middle Initial, Last Name, Suffix of Proposer’s Authorized Representative (person submitting this disclosure form and submitting the proposal)

\_\_\_\_\_

2. Contract Information

Hermosillo Trade Development Services RFP-CED22-HTDS

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

\_\_\_\_\_  
\_\_\_\_\_

4. List all individuals(s) or entity(ies) that are partners, parent companies, joint venturers, 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, list “N/A.”

\_\_\_\_\_  
\_\_\_\_\_

5. List all individuals or entities that will be subcontractors on this Contract, including each business name and the owner’s name, or list “N/A” if no subcontractors will be used on this Contract or “TBD” if subcontractors have not yet been identified.

\_\_\_\_\_  
\_\_\_\_\_

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6. List all attorneys, lobbyists, or consultants retained by any individuals listed in the answers to Questions 3, 4, or 5, assisting with this proposal and/or with securing the contract resulting from this solicitation. If none, list “none.”

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7. Disclosure of Conflict of Interest:

Is the proposer or the proposer’s authorized representative aware of any fact(s) with regard to this solicitation or the resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34? City Code Section 43-34 reads:

*“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.”*

- The proposer and the proposer’s authorized representative are not aware of any conflict(s) of interest under City Code Section 43-34.
- The proposer or the proposer’s authorized representative is aware of the following potential or actual conflict(s) of interest:

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8. Notice Regarding Prohibited Interest in Contracts:

[Arizona Revised Statutes \(A.R.S\)](#) Sections 38-501 through 38-511 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.

Although any contract in place at the time a person becomes a public officer or employee may remain in effect, the contract may not be amended, extended,

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modified, or changed in any manner during the officer's or employee's city service without following city administrative regulations.

Is the proposer or the proposer's authorized representative aware of any fact(s) with regard to this solicitation or the resulting contract that would raise a "conflict of interest" issue under A.R.S. Sections 38-501 through 38-511?

- The proposer and the proposer's authorized representative are not aware of any conflict(s) of interest under A.R.S. Sections 38-501 through 38-511.
- The proposer or the proposer's authorized representative are aware of the following conflict(s) of interest:

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9. Solicitation Transparency Policy (No Contact with City Officials or Staff During RFP Process) Acknowledgements:

- The proposer and the proposer's authorized representative understand that a person or entity seeking or applying for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting City officials and employees, other than the listed Procurement Officer, regarding a business opportunity after a solicitation has been posted.
- This "no-contact" provision only concludes when the contract resulting from this solicitation 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 established by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, as well as in Section V of this solicitation, by a proposer, or its agents, will lead to **disqualification**.

10. Fraud Prevention and Reporting Policy Acknowledgement:

- The proposer and the proposer's authorized representative acknowledge that the City has a Fraud Prevention and Reporting Policy and takes fraud seriously. The proposer or the proposer's authorized representative shall report fraud, suspicion of fraud, or any other inappropriate action to the Phoenix Integrity Line at 602-261-8999 or 602-534-5500 (TDD); or via email to [aud.integrity.line@phoenix.gov](mailto: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 business partners to report wrongdoing or bad behavior.

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Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

**OATH**

The proposer's authorized representative affirms 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 solicitation process or the resulting contract, particularly as it relates to any changes in ownership, the proposer agrees to update this form with the new information within 30 days of such changes. Failure to do so may result in the disqualification of a proposal or be deemed a breach of contract resulting from this solicitation.

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Printed Name and Title of Authorized Representative

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Authorized Representative's Signature

---

Date

---

Proposer's Legal Name (and DBA, if applicable)

**Attachment C**  
**PROPOSED HOURLY RATES**

Name of proposer: \_\_\_\_\_

Each proposer must submit an all-inclusive hourly rate for the primary consultant (and all other staff positions) performing work under any agreement resulting from this RFP. Rates must be listed in U.S. Dollars.

**The City will not be responsible for any proposer errors or omissions. The successful proposer will be contractually bound to the hourly rate(s) listed below.**

Hourly rate for Primary Consultant \$ \_\_\_\_\_

Hourly rate for: \_\_\_\_\_ \$ \_\_\_\_\_

**Add lines and staff positions as necessary.**

**ONLY THE PRIMARY CONSULTANT'S HOURLY RATE WILL BE EVALUATED**



**Attachment D**  
**EXPERIENCE SUMMARY**

Name of proposer: \_\_\_\_\_

Each proposer and each proposer's primary consultant must list the following information for enough clients to demonstrate 3 years of experience providing *economic development or Mexico trade development services*. The City will call or email clients to verify the proposer meets the minimum qualification listed in **Section I (B) (1)**. Proposals that do not include telephone and email contact information for clients will be disqualified and proposals for which the 3 years of experience cannot be verified with the listed client(s) will also be disqualified.

If needed, proposers may use multiple copies of this form to document the required experience.

Experience for:  Proposer's Primary Consultant       Proposer       Both

Client: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

General Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

Client Contact Name: \_\_\_\_\_

Client Phone Number and Email Address: \_\_\_\_\_

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Experience for:  Proposer's Primary Consultant       Proposer       Both

Client: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

General Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

Client Contact Name: \_\_\_\_\_

Client Phone Number and Email Address: \_\_\_\_\_

**ATTACHMENT E**  
**DRAFT AGREEMENT**  
**CITY OF PHOENIX**

**[Insert Agreement Name Here]**

**[Insert Legal Name of Consultant Here]**

**Agreement No. \_\_\_\_\_**

**Community and Economic Development Department  
200 W. Washington Street, 20<sup>th</sup> Floor  
Phoenix, AZ 85003  
602-262-5040**

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**EXHIBITS**

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EXHIBIT D	SUPPLEMENTAL TERMS AND CONDITIONS
EXHIBIT E	CONSULTANT’S INSURANCE CERTIFICATE

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF PHOENIX  
AND  
[Insert Legal Name of Consultant Here]**

This **AGREEMENT** is made and entered by the City of Phoenix, Arizona a municipal corporation of the State of Arizona (hereinafter referred to as the “City”) and [Insert Legal Name of Consultant Here], (hereinafter referred to as “**Consultant**”).

**RECITALS**

1. The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for professional services.
2. The City desires to obtain the services that are specifically set forth in this Agreement.
3. The City procured these professional services in accordance with Administrative Regulation 3.10.
4. Consultant possesses the skills and expertise necessary to provide such services as desired by the City.
5. This Agreement is authorized by City Council Ordinance S-XXXXX dated **Month Day, Year**.

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

**1. TERM OF AGREEMENT**

- A. This Agreement shall begin on [Insert Commencement Date] and shall have an initial term of one (1) year (“**Term**”), with four (4) option[s] to extend the Term for one year [each], which option[s] may be exercised at the sole discretion of the City.
- B. This Agreement shall terminate upon the earliest occurrence of any of the following:
  1. reaching the end of the Term and any extensions exercised as set forth in 1(A);
  2. completing the services set forth in the Scope of Work attached as **Exhibit A** (the “Services”);

3. payment of the maximum compensation under Paragraph 2 of this Agreement, unless it is amended to allow additional compensation; or
4. termination pursuant to the provisions of this Agreement.

## 2. PAYMENT

- A. The total amount to be remitted by the City to Consultant for all Services satisfactorily performed under this Agreement shall not exceed \$\_\_\_\_\_, as specified in the Fee Schedule (**Exhibit B**), with no additional charges for overhead, benefits, local travel or administrative support. Payments shall be made in proportion to the Services performed and no more than ninety percent (90%) of the total contracted price shall be paid before the work is totally completed and accepted by the City.
- B. Consultant will demonstrate good judgment when incurring costs that are considered a Reimbursable Expense while conducting business for the City. All Reimbursable Expenses will be reasonable and prudent. Generally, Reimbursable Expenses include:
  - Business Expenses: If applicable, receipts for business expenses must be submitted with all requests for payment. Business expenses that require receipts include, but are not limited to express mail; delivery services; messenger services; and outside printing.
  - Office Expenses: If applicable, 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.
  - Travel Expenses: If applicable, travel expenses must be approved in advance by the City and must be included in the Fee Schedule. Consultant will be held to comply with [City of Phoenix Administrative Regulation 3.41 – Business, Conference and Training Travel and Related Expenses, effective January 1, 2020](#), as it may be amended, as to the eligible and ineligible expenses for reimbursement and required documentation as available on the City’s website and incorporated herein as if attached.
- C. Consultant shall submit monthly invoices on or before the 15<sup>th</sup> of every month. Each monthly invoice shall be accompanied with itemized receipts. The monthly invoice shall be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation to support the charges reflected in the monthly invoice shall be provided. Upon finding of an error and/or missing documentation, the City shall return the monthly invoice to the Consultant. Consultant shall promptly resubmit the revised monthly

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invoice to the City. Each revised invoice shall document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.

- D. Invoices shall be emailed in .pdf format to [insert email address](#), and [invoices@phoenix.gov](mailto:invoices@phoenix.gov), and must include the following:
- City purchase order number or shopping cart number,
  - Invoice number and date.
  - Requesting department name and "ship-to" address.
  - Payment terms.
  - Remit to address

### **3. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS**

Consultant will provide services that will be in accordance with the Scope of Work as set forth in **Exhibit A**, which may be supplemented with additional detail 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 D**.

### **4. INSURANCE**

Consultant and subconsultants shall 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 **Exhibit C**. Failure of Consultant and subconsultants to maintain insurance during the term of the Agreement, including renewal options, is a material breach and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the City.

### **5. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER**

- A. 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 that of independent contractors. 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 only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Consultant.
- B. 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

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considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules shall accrue to such individual. 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.

**6. LEGAL WORKER REQUIREMENTS**

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

- A. 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, subsection A.
- B. A breach of warranty under paragraph A shall be deemed a material breach of the agreement and is subject to penalties up to and including termination of the Agreement.
- C. The City retains the legal right to inspect the papers of the Consultant or subconsultant employee(s) who work(s) on this Agreement to ensure that Consultant or subconsultant is complying with the warranty under paragraph A.

**7. CONFIDENTIALITY AND DATA SECURITY**

- A. 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 Services to any third person without the prior written consent of the City Manager, or his/her designee.
- B. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

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- C. In the event that data collected or obtained by the Consultant in connection with this Agreement is believed to have been compromised, Consultant shall notify the City Privacy Officer immediately. Consultant agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- D. 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 result in immediate termination of this Agreement without notice.
- E. The obligations of Consultant under this Section shall survive the termination of this Agreement.

## **8. CONTACTS WITH THIRD PARTIES**

Consultant or its subconsultants shall not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Consultant or its subconsultants be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Consultant or its subconsultants 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 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 result in immediate termination of this Agreement without notice.

## **9. EQUAL EMPLOYMENT OPPORTUNITY**

- A. Subject to **Paragraph 6 (A)**, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions about these requirements to the City's Equal Opportunity Department at (602) 262-6790.
- B. **For a contractor with 35 employees or fewer:** Consultant in performing under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. Consultant will ensure that applicants are employed, and employees



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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. 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, contractor agreements or subleases of this agreement entered into by supplier/lessee.

- C. **For a contractor 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. 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. 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 Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee. 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.
- D. Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
- E. 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.

## **10. SBE/DBE UTILIZATION**

The City extends to each individual, firm, vendor, supplier, contractor and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

## **11. AUDIT/RECORDS**

The City reserves the right, at reasonable times, to 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 five (5) years following termination of the Agreement.

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

## **12. COMPLIANCE WITH LAWS**

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to Paragraph 16.

## **13. AMENDMENTS**

Whenever an addition, deletion or alteration to the Services described in **Exhibit A** 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 without further written authorization. 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. Any work or materials furnished by Consultant without prior written authorization will 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.

**14. NON-ASSIGNABILITY**

- A. This Agreement is in the nature of a personal services contract and Consultant shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.
  
- B. 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, \_\_\_\_\_ and \_\_\_\_\_. Therefore, should any of the above named individuals sever their relationship with the Consultant, or otherwise be unavailable to carry out Consultant’s duties under this Agreement for an extended period of time, which period shall be determined at the sole discretion of the City, then the City, without notice, may immediately terminate this Agreement for cause.

**15. NO ORAL ALTERATIONS**

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

**16. 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, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

If to Consultant:

- Name
- Company Name
- Address
- City, ST ZIP
- Telephone:
- E-Mail:

If to City:

- Name
- City of Phoenix
- Community and Economic Development Department
- 200 W. Washington Street, 20th Floor
- Phoenix, AZ 85003

**Telephone:**  
**E-Mail:**

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 second day after its deposit with any commercial air courier or express delivery service; or (4) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

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

## **17. INTEGRATION**

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

## **18. 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 their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

## **19. FISCAL YEAR CLAUSE**

The City's fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of sixty (60) days immediately following the close of the fiscal year, under the provisions of A.R.S. §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.

## **20. TERMINATION OR SUSPENSION OF SERVICES**

**City's Right to Terminate:** The City reserves the right to terminate this Agreement with or without cause, or to abandon the Services, or any part of the Services not then

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completed, by notifying Consultant in writing specifying the nature, extent, and effective date of the termination. Immediately upon receiving a written notice to terminate or suspend Services, Consultant will:

- A. Discontinue advancing the work in progress, or such part that is described in the notice (unless the notice directs otherwise).
- B. 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.
- C. Appraise the work it has completed and submit its appraisal to the City for evaluation.
- D. 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.

## **21. FINAL PAYMENT**

### **A. Payment**

The City will make final payment for all Services performed and accepted within 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. Any use by the City of preliminary reports, raw data or other incomplete material returned by Consultant will be at the City's sole risk for such use.

### **B. Temporary Suspension**

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

## 22. PROFESSIONAL COMPETENCY

### A. 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, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.

### B. Level of Care and Skill

Services provided by 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 suffered or incurred arising from the failure of Consultant to adhere to the aforesaid standard of professional competence.

## 23. 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.

## 24. 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").

## 25. DOCUMENTATION

### A. Title

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All documents including but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analyses, studies or any other original works of authorship created by Consultant in the performance of this Agreement are to be and remain “works for hire” under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the work(s) shall belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Agreement is deemed to not be work for hire, then Consultant hereby assigns to the City all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. Consultant agrees to cooperate and execute additional documents reasonably necessary to conform to its obligations under this paragraph.

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

**B. Dissemination and Retention**

There shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, 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.

**C. Format and Quality**

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

**D. Document Review**

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.

**E. Submittals**

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

**26. 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.

**27. CONFLICTS OF INTEREST**

- A. 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.
- B. The City reserves the right to immediately terminate this Agreement in the event that the City determines that the Consultant has an actual or apparent conflict of interest.
- C. 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 Contractor, 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 the right of Consultant to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding shall be an issue and may be litigated in an Arizona court of competent jurisdiction. 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.
- D. This Agreement is subject to the requirements of A.R.S. §38-511.

**28. 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,



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amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, A.R.S. §§ 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 A.R.S. § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within A.R.S. § 12-821.01(A) and (B).

**29. 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.

**30. CONTINUATION DURING DISPUTES**

- A. 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 the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.
- B. 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.

**31. THIRD PARTY BENEFICIARY CLAUSE**

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

**32. PUBLIC RECORDS**

- A. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Consultant acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Consultant understands that disclosure of some or all of the items subject to this Agreement may be required by law.
- B. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which

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shall be deemed given when deposited by the City with the USPS for regular delivery to the address of the Consultant specified in their proposal. Within ten days of City notice by the City, the Consultant will inform the City in writing of any objection by the Consultant to the disclosure of the requested information. Failure by the Consultant to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.

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

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed as of the Effective Date.

**CITY**

CITY OF PHOENIX, a municipal corporation  
JEFFREY BARTON, City Manager

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

Christine Mackay  
Community and Economic Development  
Director

ATTEST:

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

APPROVED AS TO FORM:  
CRIS MEYER, City Attorney

By: \_\_\_\_\_  
Assistant Chief Counsel

**TYPE FULL LEGAL NAME OF CONSULTANT]**  
**“CONSULTANT”**

By: \_\_\_\_\_  
**[Type Name of Signatory]**

Title: \_\_\_\_\_

**Exhibit A**  
**SCOPE OF WORK**

To be added from RFP and successful proposer's proposal before execution of this Agreement.

**Exhibit B**  
**FEES**

To be negotiated and added before execution of this Agreement.

**Exhibit C**  
**INSURANCE REQUIREMENTS**

**1. DEFENSE AND INDEMNIFICATION CLAUSE:**

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

**2. CONSULTANT’S INSURANCE:**

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

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

- 2.1. SCOPE AND LIMITS OF INSURANCE:** Consultant must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1)

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the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

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

General Aggregate	7	\$2,000,000
Products – Completed Operations Aggregate		\$1,000,000
Personal and Advertising Injury		\$1,000,000
Each		\$1,000,000

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

**2.1.2. Worker’s Compensation and Employers’ Liability**

**For Consultant based in the U.S.:**

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.

**For Consultant based in Mexico:**

Consultant shall comply with any and all applicable Workers’ Compensation Statutory Employers’ Liability laws or similar requirements from the country of Mexico.

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

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

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- Consultant warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**2.2. NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the Consultant must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to the City representative listed in **Section 16**.

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

**2.4. VERIFICATION OF COVERAGE:** Consultant must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this 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 the City representative listed in **Section 19**. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

**2.5. SUBCONSULTANTS:** Consultant’s certificates shall include all subconsultants as additional insureds under its policies **OR** Consultant shall be responsible for

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

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



**Exhibit D**  
**SUPPLEMENTAL TERMS AND CONDITIONS**

**1. 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 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. Health, Environmental and Safety Requirements**

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.

**3. Lawful Presence Requirement**

Pursuant to A.R.S. §§ 1-501 and 1-502, the City is prohibited from awarding an agreement 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 awarding this Agreement. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

**4. Payment Deduction Offset Provision**

Consultant acknowledges the City Charter requires that no payment be made to any Consultant as long as there is an outstanding obligation due to the City. Consultant agrees that any obligation it owes to the City will be offset against any payment due to the Consultant from the City.

**5. Late Submission of Claim By Consultant**

The City will not honor any invoices or claims tendered one (1) year after the last item of the account accrued.

**6. Indemnification – Patent, Copyright and Trademark**

Consultant shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other

proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Agreement.

Consultant agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Phoenix and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Agreement and the Consultant further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the Consultant that these covenants are irrevocable and perpetual.

**7. 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.

**8. Liens**

Consultant shall hold the City harmless from claimants supplying labor or materials to the Consultant or its subconsultants in the performance of the Services.

**9. Right to Assurances**

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 (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.

**10. Non-Exclusive Remedies**

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

**Exhibit E**  
**CONSULTANT'S INSURANCE CERTIFICATE**

Consultant's Insurance Certificate to be added before execution of this Agreement.