



City of Phoenix, Arizona  
Street Transportation Department

---

**FRACTURED AGGREGATE SURFACE TREATMENT  
(FAST)  
LETTER OF INTEREST**

September 10, 2010

**MAYOR**  
PHIL GORDON

**CITY COUNCIL**

DISTRICT NO. 1 – THELDA WILLIAMS  
DISTRICT NO. 2 – PEGGY NEELY  
DISTRICT NO. 3 – BILL GATES  
DISTRICT NO. 4 – TOM SIMPLOT

DISTRICT NO. 5 – CLAUDE MATTOX  
DISTRICT NO. 6 – SAL DICICCIO  
DISTRICT NO. 7 – MICHAEL NOWAKOWSKI  
DISTRICT NO. 8 – MICHAEL JOHNSON

CITY MANAGER  
ACTING CITY ENGINEER

DAVID CAVAZOS  
TAUNY WOO, P.E., LEED AP

## TABLE OF CONTENTS

<b>SECTION</b>	<b>PAGE</b>
<b>BACKGROUND.....</b>	<b>1</b>
<b>PURPOSE.....</b>	<b>1</b>
<b>OVERVIEW.....</b>	<b>2</b>
<b>PHASE 1 – RESPONSE CRITERIA.....</b>	<b>2</b>
<b>RESPONSE REQUIREMENTS.....</b>	<b>4</b>
<b>PHASE 2 – FIELD EVALUATION.....</b>	<b>5</b>
<b>SCHEDULE.....</b>	<b>5</b>
<b>DISCLAIMERS.....</b>	<b>5</b>
<b>QUESTIONS.....</b>	<b>6</b>
<b>EXHIBIT A – EXAMPLE TERMS AND CONDITIONS.....</b>	<b>A-1</b>

# FRACTURED AGGREGATE SURFACE TREATMENT (FAST) LETTER OF INTEREST

## BACKGROUND

With the unprecedented rising cost of asphalt, severe budget conditions, and a 78-year resurfacing cycle for residential streets, the Street Transportation Department was asked to review the current Pavement Management Program by evaluating the use of chip seal.

Up until 1988, chip seal was part of the City's Pavement Management Program. It was used to resurface streets that were not due for an overlay, but required more than crack seal. Due to complaints received from residents regarding windshield damage and tracking of material, the City decided to stop using chip seal and find a suitable replacement.

The best alternative, while not nearly as effective or durable as chip seal, is slurry seal. The City started using slurry seal in 1989. Slurry seal is structurally inferior to chip seal and does not do an effective job of suppressing surface cracking. Although the cost of slurry seal is half that of chip seal, it would require three applications of slurry seal over a seven-year period to match the effective service life of one chip seal application.

Over the last seven years, the Street Transportation Department has been unable to keep up with sky-rocketing asphalt prices. Without funding to account for inflation and increasing material and construction costs, the department was forced to reduce the number of miles of streets resurfaced each year. In 2001, the department resurfaced 240 miles of streets. In 2008, that number was reduced to only 118 miles. This reduction to the standard maintenance cycle resulted in several streets deteriorating beyond what slurry seal could repair, yet are not eligible for maintenance under the current 78-year overlay cycle.

Over the last 11 months, the Street Transportation Department has been conducting a pilot program for Fractured Aggregate Surface Treatment (FAST) utilizing two sizes of lightweight aggregate, asphalt rubber binder and polymer modified asphalt rubber binder. The pilot program was implemented to help the department determine product life, as well as provide a method to gauge the reaction of residents to the reintroduction of chip seal. Based on the preliminary results from the pilot program, the City Council approved reallocating a portion of the Street Transportation Department's annual residential resurfacing budget to the FAST program.

## PURPOSE

The City is issuing this Letter of Interest (LOI) to the contracting/construction community to solicit interest and identify alternative means and methods that could potentially be utilized for the FAST program.

The current City Council approved means and method for FAST includes utilizing lightweight aggregate along with a binder that includes rubber. The lightweight aggregate is a synthetic expanded shale, clay or slate (ESCS) which has a dry unit weight between 35 to 55 pounds per cubic foot, which is approximately half of the weight of conventional aggregate. Unfortunately, this aggregate is not available locally and there has been interest expressed in developing a method that could utilize local aggregate.

The City requires a process utilizing a mixture of asphalt and aggregate applied to the existing roadway surface to preserve and rehabilitate the surface.

## OVERVIEW

The purpose of this LOI is to solicit information to use in identifying possible techniques and technologies to extend the service life of the City's streets.

This will be a two phase process. In the first phase, the City will issue this LOI, receive Statements of Interest (SOIs), evaluate the SOIs, and select firms to participate in the second phase of the process. Selection of the firms to participate in field demonstrations will be based the City's evaluation of SOIs using the criteria provided below. The second phase will include field demonstrations of the processes selected in the first phase within one year. Execution of the second phase will be based on the Terms and Conditions contained in Exhibit A.

The City reserves the right not to proceed to the second step of the process and not to select any of the respondents for the proposed field demonstrations. At a future date, the City may engage in a project to utilize any proven means and methods from this solicitation in addition to the City's current means and methods. However, the City reserves the right to not utilize the means and methods that may be demonstrated as part of this LOI process for future projects. A response to the LOI is not mandatory for future participation in any solicitation or procurement process. Failure to submit a response to this document will not disqualify anyone from submitting a response to any formal procurement process for consulting or construction services. All responses received may be made available to the public. No responses can be kept confidential.

## PHASE 1 - RESPONSE CRITERIA

The City may select up to three (3) successful team(s) through a qualifications-based selection process to potentially proceed to construction of test section(s) utilizing their proposed means and methods. To be allowed to place a test section, the team must be accepted in the written portion of this LOI. The construction of the test section shall be done at the team's cost and the team shall provide a year warranty on workmanship, materials and defects.

The qualifications-based selection will be based on the following criteria:

### A. General Information (5 points)

1. Provide a general description of the team that is proposing to provide services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.
2. Provide the following information:
  - a. List the Arizona contractor licenses held by the team and key personnel who will be assigned to this project. Provide the contractor license number and reference the appropriate licenses held, if needed. In order to be considered for this project, the firm must hold the correct license as deemed appropriate by the Arizona Registrar of Contractors prior to submitting an SOI for this project in accordance with Arizona Revised Statute §32-1151.
  - b. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five years. Identify any claims arising from a contract which resulted in litigation or arbitration within the last three years. Briefly describe the circumstances and the outcomes.

- c. If selected as a finalist to participate in Phase 2 of this project, you will be required to provide a statement from an A- or better surety company describing the Company's bonding capacity.

B. Experience and Qualifications of the Team (15 points)

1. Identify at least three comparable projects in which the team performed the same type of work required for the FAST program. For each project identified, provide the following:
  - a. Description of the project
  - b. Role of the firm (General Contractor, Construction Manager, etc.)
  - c. Project's original contracted construction cost and final construction cost
  - d. Construction dates
  - e. Project owner
  - f. Reference information (two current names with telephone numbers per project)

C. Experience of Key Personnel to be assigned to this project (10 points)

1. For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For other projects provide the following:
  - a. Description of the project
  - b. Role of the person
  - c. Project's original contracted construction cost and final construction cost
  - d. Construction dates
  - e. Project owner
  - f. Reference information (two current names with telephone numbers per project)

D. Proposed Means and Methods to be Utilized (50 points)

1. Team should discuss their proposed means and methods for construction of FAST including:
  - a. Proposed Processes
  - b. Technical Approach
  - c. Materials
  - d. Equipment
2. Team should identify how they plan to address owner objectives such as:
  - a. Citizen acceptance
  - b. Loose aggregate (flying aggregate)
  - c. Binder Tracking
3. Minimum technical requirements are as follows:
  - a. Fog Seal is Mandatory after aggregate application
  - b. Nominal Aggregate Size is a minimum of 1/4" and maximum of 3/8"
  - c. Properties of Aggregate meet ASTM Standards for the following:
    - 1) LA Abrasion
    - 2) Soundness
    - 3) Fractured Faces

- d. Asphalt binder:
- 1) Rubber must be a main component (Minimum content is 20%, Maximum content is 24%)
  - 2) Inclusion of other additives is optional, depending on project needs
  - 3) PG asphalt must meet weather conditions considering the high temperatures experienced in the Phoenix area

E. Other Selection Criteria (10 points)

For City of Phoenix projects, list all projects awarded to each firm during the last two years, all projects currently ongoing/or all projects for which your firm has been selected but are not yet under contract. For each project, provide the project description, award date (note if pending), construction cost, status of completion, and estimated completion date. As part of our selection process, the city has the responsibility of taking into account the size and complexity of the project under consideration, the resource investment of the firm in current City work, and the amount of previous work recently performed for the City in order to extend opportunities to a broad representation of qualified firms.

F. Overall evaluation of the team and its perceived ability to provide the required services (10 points)

This is to be determined by the selection panel members. No submittal response is required.

## RESPONSE REQUIREMENTS

Interested teams should submit a Statement of Interest, which includes a one-page cover letter plus a maximum length of 20 pages to address the response criteria (excluding resumes, but including the organization chart). Resumes for each key team member shall be limited to two pages and should be incorporated as an appendix at the end of the SOI. (Note: The resume shall contain only employee information, not additional company information.) Please provide six (6) copies of the SOI by 12:00 noon, local time on Friday October 8, 2010. Submittals should be provided to:

Mr. Syd Anderson, PE  
City of Phoenix  
Street Transportation Department  
Street Maintenance Division  
ATTN: Fractured Aggregate Surface Treatment (FAST) LOI  
200 West Washington Street, 5<sup>th</sup> Floor  
Phoenix, AZ 85003-1611

Within the one-page cover letter, include your firm's full company name, address, phone number and the e-mail address for your firm's contact person for the project.

Adherence to the maximum page criterion is critical: each page side (maximum 8-1/2" x 11") with criteria information will be counted. Pages that have project photos, charts and/or graphs will be counted towards the allowed number of pages. Front and back cover, Table of Contents pages and divider (tab) pages will not be counted unless they include qualifications information that could be considered by the selection panel. Resumes should provide information for key staff (no company profiles) and should not include project pictures or general firm information. Any additional company information included in the resume section will be counted against the maximum page allowance. Do not submit additional information not listed herein. Font size may not be less than 10 point.

Firms interested in submitting must be in compliance with the City of Phoenix Affirmative Action Ordinance. **The firm's Affirmative Action expiration date must be on each submittal cover.** Questions regarding Affirmative Action dates should be directed to the Equal Opportunity Department at 602-262-6790.

Please be advised that failure to comply with the following criteria **may be grounds for disqualification**:

- Firms must comply with City of Phoenix Affirmative Action Requirements by submittal time and due date.
- Receipt of submittal by the specified cut-off date and time.
- The number of copies of the submittal specified.
- Adherence to maximum page requirements.
- Deposit of submittal in correct location.
- Providing company profiles in the resume appendix.

## **PHASE 2 - FIELD EVALUATION**

At the culmination of Phase 1 up to three (3) teams may be selected to proceed into field demonstrations for further evaluation. During Phase 2 teams will be evaluated during the application process, using criteria below, followed by final field evaluations of test sections at the end of the year warranty period to determine performance of the placed product. Field evaluations will be done by visual observation using the following criteria:

1. Tracking of binder
2. Aggregate Loss
3. Condition of Surface at locations with sharp turning movements
4. Adhesion to existing roadway surface
5. Overall coverage of street
6. Aggregate embedment (maximum 50%)
7. Public Relations
  - a. Comments or complaints from public to be logged/tracked
  - b. City to provide independent public relations firm

The City has selected portions of Quarter Sections 23-31, 23-32, 22-32 and 24-32 as the designation test area. The proposed area is bounded by 19<sup>th</sup> Street on the west, Lincoln Drive on the south, 26<sup>th</sup> Street on the east and Belmont Avenue on the north.

## **SCHEDULE**

Responses to the LOI shall be submitted no later than October 8, 2010. Firms selected will be contacted no later than October 22, 2010 to disclose evaluation results and discuss potential scheduling for future steps.

## **DISCLAIMERS**

The City is asking for responses to this LOI for informational purposes only, and will not be obligated in any way to use any of the recommendations received. Firms responding to this LOI will not be compensated by the City in any way. Also, responding to this LOI will not enhance any firm's chances of receiving future work from the City. Similarly, not responding to this RFI will not disadvantage any firm when competing for future work.

The construction industry's input is appreciated and will be used to further develop the procedures utilized to construct FAST by the City of Phoenix.

## QUESTIONS

Administrative questions, such as format and submittal dates, should be directed to Syd Anderson of the Street Transportation Department at (602) 495-2047. Respondents requiring technical information, clarifications, or interpretations need to submit those requests in writing or via e-mail. Written requests for information or clarification of this LOI should be submitted to:

Mr. Syd Anderson, PE  
City of Phoenix  
Street Transportation Department  
Street Maintenance Division  
ATTN: Fractured Aggregate Surface Treatment (FAST) LOI  
200 West Washington Street, 5<sup>th</sup> Floor  
Phoenix, AZ 85003-1611

E-mail questions may be sent to: [Syd.Anderson@phoenix.gov](mailto:Syd.Anderson@phoenix.gov). Upon receipt of questions, the Street Transportation Department will prepare a listing of Frequently Asked Questions which may be accessed at <http://phoenix.gov/STREETS/index.html>. ALL questions shall be received by October 1, 2010 to allow ample time to respond.

# EXHIBIT A—EXAMPLE TERMS AND CONDITIONS

CITY OF PHOENIX

**Professional Services  
Consulting Agreement**

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

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

## TABLE OF CONTENTS

1. <u>TERM OF AGREEMENT</u> .....	4
2. <u>PAYMENT</u> .....	5
3. <u>SCOPE OF WORK</u> .....	6
4. <u>INDEMNIFICATION OF CITY AGAINST LIABILITY</u> .....	7
5. <u>INSURANCE</u> .....	7
6. <u>INDEPENDENT CONSULTANT STATUS; EMPLOYMENT DISCLAIMER</u> .....	7
7. <u>IRAN AND SUDAN</u> .....	8
8. <u>LEGAL WORKER REQUIREMENTS</u> .....	8
9. <u>CONFIDENTIALITY AND DATA SECURITY</u> .....	8
10. <u>CONTACTS WITH THIRD PARTIES</u> .....	9
11. <u>AFFIRMATIVE ACTION REQUIREMENT</u> .....	10
12. <u>DBE/MBE/WBE/SBE UTILIZATION</u> .....	10
13. <u>AUDIT/RECORDS</u> .....	10
16. <u>AMENDMENTS</u> .....	16
17. <u>NON-ASSIGNABILITY</u> .....	17
18. <u>NO ORAL ALTERATIONS</u> .....	17
19. <u>NOTICES</u> .....	17
20. <u>INTEGRATION</u> .....	18
21. <u>GOVERNING LAW; FORUM; VENUE</u> .....	18
22. <u>FISCAL YEAR CLAUSE</u> .....	19
23. <u>TERMINATION OR SUSPENSION OF SERVICES</u> .....	19
24. <u>PROFESSIONAL COMPETENCY</u> .....	20

25. <u>SPECIFIC PERFORMANCE</u> .....	20
26. <u>FORCE MAJEURE</u> .....	20
27. <u>DOCUMENTATION</u> .....	21
28. <u>RELEASE OF INFORMATION - ADVERTISING AND PROMOTION</u> .....	22
29. <u>CONFLICTS OF INTEREST</u> .....	22
30. <u>CLAIMS OR DEMANDS AGAINST THE CITY</u> .....	23
31. <u>WAIVER OF CLAIMS FOR ANTICIPATED PROFITS</u> .....	23
32. <u>CONTINUATION DURING DISPUTES</u> .....	23
33. <u>THIRD PARTY BENEFICIARY CLAUSE</u> .....	24

**EXHIBITS**

<b>EXHIBIT A</b>	<b>SCOPE OF WORK</b>
<b>EXHIBIT B</b>	<b>FEE SCHEDULE</b>
<b>EXHIBIT C</b>	<b>ADMINISTRATIVE REGULATION 3.41, REVISED SEPTEMBER 1, 2006</b>
<b>EXHIBIT D</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT E</b>	<b>SUPPLEMENTAL TERMS AND CONDITIONS</b>
<b>EXHIBIT F</b>	<b>CONSULTANT’S INSURANCE CERTIFICATE</b>

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

This **AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Phoenix, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as “**City**”) and [insert legal name of 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 Formal Action of the City Council dated \_\_\_\_\_.

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

**1. TERM OF AGREEMENT**

A. This Agreement shall commence on \_\_\_\_\_, 20\_\_ and the term shall be for \_\_\_\_\_ years, with \_\_\_\_\_ 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per year including reasonable and necessary travel expenses, if approved in advance by the City and included in the Fee Schedule (**Exhibit B**). Under this Agreement, the City will pay for Services at the rate(s) specified in the Fee Schedule and that comply with the requirements for Reimbursable Expenses as outlined below, 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 contract price shall be paid before the work is totally completed and accepted by the City.

B. Consultant shall submit monthly invoices on or before the \_\_\_th 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 shall be provided that supports the charges reflected in the monthly invoice. 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 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.

Invoices shall be submitted to:

---

---

---

---

C. Consultant shall demonstrate good judgment when incurring costs that are considered a Reimbursable Expense while conducting business for the City. All Reimbursable Expenses shall be reasonable and prudent. Generally, Reimbursable Expenses include:

1. Business Expenses: 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.

2. Office Expenses: 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.

3. Travel Expenses: Travel expenses must be approved in advance by the City and must be included in the Fee Schedule. Consultant shall be held to comply with City of Phoenix Administrative Regulation 3.41 – Business, Conference and Training Travel and Related Expenses, revised September 1, 2006, as it may be amended, as to the eligible and ineligible expenses for reimbursement and required documentation as set forth in **Exhibit C** attached hereto and incorporated herein.

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

Consultant will provide consulting 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 E**. Consultant will provide progress reports to the [\[insert who Consultant is to provide reports to, if applicable\]](#) according to a mutually agreed-upon schedule.

#### **4. INDEMNIFICATION OF CITY AGAINST LIABILITY**

Consultant shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, Consultant agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Consultant for the City.

#### **5. INSURANCE**

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

#### **6. 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 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.

## **7. IRAN AND SUDAN**

Pursuant to Arizona Revised Statutes §§ 35.391.06 and 35-393.06, Consultant certifies that it does not have a scrutinized business operation, as defined in Arizona Revised Statutes §§ 35-391 and 35-393, in either Iran or Sudan. If Consultant's certification is found to be false, the City may terminate this Agreement or impose other remedies due to the false certification.

## **8. LEGAL WORKER REQUIREMENTS**

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

A. Consultant and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.

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 subcontractor employee(s) who work(s) on this Agreement to ensure that Consultant or subcontractor is complying with the warranty under paragraph A.

## **9. 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.

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 subcontractor/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.

## **10. CONTACTS WITH THIRD PARTIES**

Consultant or its subcontractors 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 subcontractors 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 subcontractors 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 subcontractors under this Section shall survive the termination of this Agreement.

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

#### **11. AFFIRMATIVE ACTION REQUIREMENT**

In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Affirmative Action Program. Consultant is responsible for maintaining its eligibility during the life of the Agreement and failure to do so may result in termination of the Agreement. Consultant will direct any questions in regard to the Affirmative Action Program to the Affirmative Action Contract Compliance Section of the Equal Opportunity Department, (602) 262-6790.

#### **12. DBE/MBE/WBE/SBE 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 disadvantaged and/or minority-owned, woman-owned and small businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

#### **13. 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 three (3) years following termination of the Agreement.

#### 14. 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.

#### 15. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING.

A. Contract Worker Background Screening. Contractor agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the City pursuant to this Agreement shall be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense as set forth in this Section. The Background Screening provided by Contractor shall comply with all applicable laws, rules and regulations. Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Agreement or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

B. Background Screening Requirements and Criteria. Because of the varied types of services performed, the City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for this Agreement is **[Note: Department to insert ]**.

##### 1. Minimum Risk and Background Screening ("Minimum Risk").

A minimum risk Background Screening shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to City facilities is escorted by City workers. The Background Screening for minimum risk shall consist

of the screening required by Arizona Revised Statutes §§ 41-4401 and following to verify legal Arizona worker status.

2. Standard Risk and Background Screening (“Standard Risk”).

A standard risk Background Screening shall be performed when the Contract Worker’s work assignment will: (i) require a badge or key for access to City facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or (iii) allow unescorted access to City facilities during normal and non-business hours. The Background Screening for this standard risk level shall include the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and shall include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker’s proposed date of hire.

3. Maximum Risk and Background Screening (“Maximum Risk”).

A maximum risk Background Screening shall be performed when the Contract Worker’s work assignment will: (i) have any contact with vulnerable people such as children, youth, elderly, or individuals with disabilities; or (ii) have any responsibility for the receipt or payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or (iii) have unescorted access to City data centers, money rooms, or high-value equipment rooms; or (iv) have access to private residences; or (v) have access to Homeland Defense Bureau identified critical infrastructure sites/facilities. The Background Screening for this maximum risk level shall include the Background Screening required for the Standard Risk level, plus a sexual offender search, a credit check, and driving record search for the preceding seven (7) years from the Contract Worker’s proposed date of hire. Contract Workers who work directly with children or vulnerable adults are also subject to fingerprint verification through the Arizona Department of Public Safety as mandated by Phoenix City Code, § 2-45.6.

C. Contractor Certification; City Approval of Maximum Risk Background Screening. By executing this Agreement, Contractor certifies and warrants that Contractor has read the Background Screening requirements and criteria in this Section, understands them and that all Background

Screening information furnished to the City is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that Contractor has satisfied all such Background Screening requirements for the Minimum Risk and Standard Risk Background Screenings as required. In addition, for Maximum Risk Background Screening, Contractor shall furnish to **[insert department contact information]** for the City's review and approval such Background Screenings for any Contract Worker considered for performing services under this Agreement where human safety or facility security is classified as a Maximum Risk level. The subject Contract Worker shall not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City's written acceptance of the subject Contract Worker's Maximum Risk Background Screening. The City may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a Maximum Risk level under this Agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.

- D. Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts. Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.
- E. Materiality of Background Screening Requirements; Indemnity. The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by Contractor shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 4 of this Agreement, Contractor shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 4) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.
- F. Continuing Duty; Audit. Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Contractor shall notify the City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section pursuant to Section 13.

**16. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS.**

**A. A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.**

**B. Badge Access Procedures.** An authorized City of Phoenix badge application form is available at the City of Phoenix Badging Office, 251 W. Washington St., 2<sup>nd</sup> Floor, Phoenix, AZ 85003-1611. Each Contract Worker (as defined herein) who is furnishing Standard Risk (as defined herein) or Maximum Risk (as defined herein) services under this Agreement shall submit to the City of Phoenix, Banking & Cashiering Division, 251 W. Washington, 3<sup>rd</sup> Floor, Phoenix, AZ 85003-1611: (i) a fully completed and authorized City of Phoenix badge application form; (ii) a check in the initial badge fee amount listed below made payable to the "City of Phoenix"; and (iii) two forms of identification. One form of identification must be a government issued credential with an accompanying photograph. The second form of identification must be a valid passport; military issued identification card; immigration and naturalized services identification card; social security card; or an original birth certificate. After receipt of the badge application and payment, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information within five (5) business days from initial submission of the badge application or the subject Contract Worker's badge application shall be rejected.

**C. Key Access Procedures.** If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. The key issue/return form is available at and the completed form shall be submitted to the badging office at the address above.

- D. Stolen or Lost Badges or Keys. Contractor shall report lost or stolen badges or keys to their local police department and must obtain a police department report (PDR) prior to re-issuance of any lost or stolen badge or key. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees listed below prior to issuance of a new badge or key.
- E. Return of Badges or Keys. All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.
- F. Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach. Contractor's default under this Section shall include, but is not limited to the following: (i) Contract Worker gains access to a City facility(s) without the proper badge or key; (ii) Contract Worker uses a badge or key of another to gain access to a City facility; (iii) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (iv) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (v) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, the Contractor shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) [**department may insert other amount**] for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly

acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor breaches this Section. The parties further agree that three (3) breaches by Contractor of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.

G. Badge and Key Fees. The following constitute the badge and key fees under this Agreement. The City reserves the right to amend these fees upon thirty (30) days prior written notice to Contractor.

Initial Badge Fee:	\$ 55.00	per applicant
Replacement Badge Fee:	\$ 55.00	per badge
Lost / Stolen Badge Fee:	\$ 55.00	per badge
Replacement Key Fee:	\$ 55.00	per key
Lost / Stolen Key Fee:	\$ 55.00	per key
Replacement Locks	\$ 55.00	per lock

## 17. 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 shall be at Consultant's risk, cost and expense, and Consultant agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

**18. NON-ASSIGNABILITY**

A. This Agreement is in the nature of a personal services agreement 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.

**19. 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.

**20. 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:

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

Telephone:

Facsimile:

E-Mail:

If to City:

---

---

---

---

Telephone: (602)

Facsimile: (602)

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

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

## **21. 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.

## **22. 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.

## **23. 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 Arizona Revised Statutes §42-17108. Therefore, Consultant must submit billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

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

### **A. City's Right to Terminate**

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

1. Discontinue advancing the work in progress, or such part that is described in the notice.
2. Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
3. Appraise the work it has completed and submit its appraisal to the City for evaluation.
4. Be paid in full the pro rata value for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Consultant in terminating the work, including demobilization of field service. No payment shall be made for loss of anticipated profits or unperformed services.

### **B. Final Payment**

The City shall make final payment for all Services performed and accepted within sixty (60) days after Consultant has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Consultant shall be at the City's sole risk for such use.

C. **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.

**25. 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.

**26. 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.

**27. 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").

## **28. DOCUMENTATION**

### **A. Title**

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.

**29. 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.

**30. 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 disqualify Consultant in the event that the City determines that Consultant has an actual or apparent conflict of interest with the purposes of this Agreement and the provisions and procedures set forth in Paragraph 24 shall apply.

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 Consultant, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one (1) calendar day written notice to Consultant, terminate 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 Arizona Revised Statutes §38-511.

### **31. CLAIMS OR DEMANDS AGAINST THE CITY**

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

Moreover, nothing in this Agreement shall constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

### **32. 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.

### **33. 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 thereof.

**34. 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.

**Remainder of page intentionally left blank. Signature page to follow.**

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

corporation

CITY OF PHOENIX, a municipal

DAVID CAVAZOS, City Manager

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

[Type Name of Dept. Director]

[Type Title]

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney

**[TYPE FULL LEGAL NAME OF  
CONSULTANT] "CONSULTANT"**

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

[Type Name of Signatory]

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